CONCISE PRECEDENTS
OF
WILLS.

CHARLES WEAVER, B. A.

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A COLLECTION

OF

CONCISE PRECEDENTS

OF

WILLS.

WITH INTRODUCTION, NOTES, AND AN APPENDIX OF STATUTES.

BY

CHARLES WEAVER, B.A. (T.C.D.).

LONDON:
STEVENS AND SONS, 119, CHANCERY LANE.
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1882.

PREFACE.

Of the following precedents, some have been prepared for the present work, and others adapted from drafts previously used in practice. The notes are directed chiefly to practical points and difficulties, such as may occur to a practitioner when preparing a will under ordinary circumstances. Thus, while some well-known principles and important points of law are passed over in silence from their being adequately dealt with by able and at the same time clear and simple treatises already in the hands of the Profession, it is hoped that some of the notes may supply assistance of a kind not found elsewhere, not merely to solicitors, but also to their articled clerks; and that the work may be found useful either as a supplement to one of the established books of precedents, or as a simpler and at the same time more exclusively practical manual.

October, 1882.

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WILLS.

INTRODUCTION.

We shall not follow the example of others who have written on the preparation of wills, in expatiating on the difficulty of this branch of professional work; since, if we adopt the famous definition of a difficulty as "something to be overcome," then the greater the difficulty so much the more desirable is it for the practitioner to have a reasonable confidence in his own powers, accompanied by that kind of caution which shows itself in practical vigilance, not in an apprehension of incompetence for his task, which is in itself one of the greatest of disqualifications.

If an experienced practitioner were asked, how skill in the drafting of wills can be acquired, his answer would, no doubt, be somewhat to this effect—"by practice and experience, engrafted upon a previous knowledge of legal principles:" and from a certain point of view it may be said that these qualifications contain in themselves both the bane and the antidote; for the man who has no legal knowledge whatever will draw what a lawyer would

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consider a difficult will, without hesitation or doubt; while he, who has theoretical knowledge merely, will have skill to see the difficulties, but not to surmount them. The former—

> . . . . . incedit per ignes
> Suppositos cineri doloso,

perfectly happy so long as not actually scorched; the latter shrinks back in nervous apprehension of the thousand dangers to which knowledge has opened his eyes. It is only he who combines theory, practice, and experience who can at once avoid the surrounding perils and trace out for himself a path of safety.

Although solicitors are, for the most part, amply endowed with theoretical knowledge, we yet venture to think that this advantage is too often suffered to "rust in them unused;" and that it is their custom to rely too implicitly on precedents, only taking the trouble to satisfy themselves that the precedent chosen was framed with a view to a similar state of facts to that with which they now have to deal, and then adopting it without much inquiry as to the necessity of its various clauses, or any endeavour to criticise and modify it in harmony with more recent practice, and with a view to what the law and the special circumstances really and essentially require.

It is with a view therefore to promoting the study of the various forms used in the preparation of wills, with reference as well to legal principles as to the practical requirements of particular cases, that we have adopted the plan of adding, at the foot of each precedent, notes explaining the meaning and object

of some of the clauses introduced, and stating the special circumstances which would have led to the will being framed in the given shape. The practitioner will thus be the better enabled to decide to what extent the precedent suits the circumstances with which he has to do.

Before commencing the preparation of a will, full and ample instructions should be obtained from the client, not only as to the nature and extent of the property, but also as to the circumstances of his family. It should be ascertained what freehold estate he has, what, if any, copyholds or leaseholds, and what incumbrances these may be subject to; also the nature and value of the personal estate. If the debts and legacies are of large amount it should be considered whether the personal estate is sufficient to meet them, and what part of the personalty is to be first applied for the purpose; and, if the personalty is not sufficient, whether the deficiency is to be met by a charge upon the realty, or a sale of the whole or part of it; since it must be borne in mind that the real estate is not liable to contribute towards payment of the legacies, unless charged therewith, or directed to be sold, except so far as the assets may be marshalled in favour of a legatee.

If the testator be married, he should be asked whether there is any settlement; and, if so, the settlement should be examined, in order to ascertain whether any of the property proposed to be dealt with is included in it. And if it be intended to exercise any power, the instrument containing the power should of course be inspected.

In a case where the whole property is to be left

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absolutely to one individual, the preparation of a will is not a difficult matter. It is where we have to do with trusts for lives, and remainders over, that the task involves more thought and consideration. Let us take an instance, and suppose the case of a bequest in trust for A. for life, and after his death, for his children, without adding any qualification to the term "children," such as "the children of A. living at my decease," or "the children of A. living at his the said A.'s decease." Now, if A. should have some children living at the date of the will, other children born after the date of the will, but before the testator's death, and others again born after the testator's death; we should naturally inquire, which of these different sets of children would be entitled to share in the benefit of the trust; or, in other words, which of them the term "children," as used in the will, must be taken to include.

The answer in this case would be "those living at the testator's decease, or born at any time afterwards."

Again; suppose the trust, after the death of A., were for the children of B. Here we see, B. might have not only children living or born during all the different periods mentioned in the former case respectively, but also children born after the death of A.; that is to say, after the time fixed by the will for distributing the fund: and we should have to consider whether the additional class of children would be entitled to participate. To the last query the answer would be "No." The trust would include those children only who were living at the testator's decease, or who came into existence afterwards *during the life of A.* (Jarman on Wills, 3rd

edition, vol. ii. p. 143), and therefore, if the intention, in such a case, were to include children born after A.'s death, it should be so expressed.

Next let us suppose that one of the children of A. or B., who would be entitled to a share if living at A.'s death, dies in A.'s lifetime. What would become of his share?

We have not, so far, supposed that the legatees in remainder are made tenants in common, either by express words to that effect, or by words of severance or equality, such as "equally to be divided between them," "in equal shares," "equally," &c., which would have the same operation; and in default of any such expressions, their ownership would be joint (Jarman on Wills, 3rd edition, vol. ii. pp. 233, 235; *Kenworthy* v. *Ward*, 11 Hare, 196), and therefore the share of any child, who dies in the lifetime of A., would survive to the other children, unless the legatee has dealt with it by some transaction *inter vivos*, which would have the effect of severing the joint ownership as regards the share so dealt with, leaving however the joint ownership, and its necessary incident, the right of survivorship, unaffected as regards the shares of the other children. It is evident that this principle of survivorship may operate with great harshness, in excluding a wife or child of a deceased legatee from any participation in the fund. But if words expressly or impliedly creating a tenancy in common had been introduced, then the share of a child dying after the testator, but before A., the life owner, would pass to such child's personal representatives; that is to say, in the event of his or her dying under age, or

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otherwise dying intestate, the husband or wife, child, father (in the case of the trust for B.'s children), mother, brother, or sister, of the deceased child would take out administration, and be enabled, when the time of distribution came, to receive, and give the trustees a discharge for the share, and divide it amongst the next of kin (if entitled); or if the deceased child left a will, the share would similarly be payable to his or her executors.

It will now be evident that where there is a trust for an individual for life, with remainder in favour of a class, it should, if only for the sake of clearness, and to avoid the necessity for repeated discussions and explanations, be shown how the class is to be ascertained. Thus, in the case above supposed, in order to produce the same legal effects as have been described, whilst preserving clearness, the trust for the children should be expressed in some such way as follows:—"In trust for the children of A. [or B.], who shall be living at my decease, or who shall be born at any time afterwards [during the life of the said A.] to be equally divided between them." But, in fact, it is usual to go somewhat further than this; because, supposing the trust to be merely as above, if one of the children entitled were to die before the period of distribution, the expense of probate or administration would be incurred (as we have seen), and legacy or residuary duty would also become payable on account of the deceased child's estate. The method usually adopted is to make the death of the life owner the time for ascertaining the class; and to let the class comprise not merely children, but the issue of deceased children;

the trust being in the following, or some similar form:—"In trust for the children of A. [or B.], who shall be living at the decease of A. and the issue, then living, of any children of the said A. [or B.] who shall be then dead, to be equally divided between them; the issue of any or every deceased child of the said A. [or B.], taking the share which his, her, or their parent would, if living, have taken respectively; and, if more than one, equally between them."

The plan of postponing the time for ascertaining a class should be adopted also in the case of a future trust in favour of the statutory next of kin of a given person. Let us suppose certain personal estate to be left in trust for the persons who would, under the Statutes of Distribution, be entitled to the personal estate of B. if he died intestate. Then, if B. dies before the testator, the persons entitled under the trust will be such of the statutory next of kin of B. (a class to be ascertained at B.'s death) as survive the testator; but, if B. survives the testator, the persons entitled will be simply those whom the statutes designate; and this will still be the case, even though the period of distribution may have to await the expiration of some life interest, and thus occur considerably later than the death of B.; the shares of those who die in the meanwhile being transmitted to their personal representatives. Now, if the time of distribution thus comes later than the ascertainment of the class, there may be some trouble, when the time of distribution arrives, in ascertaining who were the statutory next of kin of B.; and, further, if any deaths should intervene, it would be necessary to

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ascertain who are the representatives of the deceased, or even, perhaps, to require administrations to be taken out, so that there may be persons qualified to give receipts for their shares. To prevent these inconveniences, the trust, in such a case, should be for the persons who *would* be entitled to the personal estate of B. under the Statutes, in case he were to die immediately after the decease of A. (the life owner), or other the date when the fund will fall into possession. Thus, the class will be easily ascertained, and those who obtain vested interests will be alive to receive their shares in person. It should be borne in mind that the words "next of kin," standing alone, mean those who are related in equal degree to the propositus; thus admitting the father and mother concurrently with children, and excluding those relatives who could claim by representation under the Statutes; although the words may be explained by subsequent reference to the Statutes so as to exclude a parent from taking concurrently with a child, and to admit a nephew or niece to take concurrently with a brother or sister. But a reference to "kin" or "kindred" would probably exclude a husband or wife, notwithstanding a reference to the Statutes. On the whole, it is, perhaps, the safest plan to refer to the Statutes, omitting any such words as "next of kin," &c., and exclude a husband or wife, if such be the intention, either by a direct expression to that effect, or by making the trust in favour of the persons who would be entitled to B.'s personal estate under the Statutes, in case he, or she, had died *unmarried* and intestate.

Where the testator has children, it should never be omitted to appoint guardians. There is a not uncommon impression that this is unnecessary where the mother is living; but it should be remembered that the guardianship of the mother, apart from the Statute 12 Car. II. c. 24, is for nurture only, and does not give her the power to manage the infant's property (a matter which may occasion trouble and expense in case he becomes entitled to property independently of his father's will), and, moreover, that guardianship for nurture only lasts to the age of fourteen, although, according to Mr. Serjeant Stephen, it would now be generally considered that the parent has the care and control of the infant's *person* until he attains twenty-one. (Stephen's Comm. 5th ed. vol. ii. p. 322.)

Again, the mother has no power to appoint guardians, by will or otherwise; so that if the father dies without appointing, and the mother also dies before the children are of age, the infants will be left without a guardian in any sense, and an application to the Court will be inevitable.

If there are a large number of legatees, and especially where some of them are distant relatives, the death of any one of whom might not occur to the testator as a ground for altering his will; or where some of them live at a distance from the testator, and do not correspond with him, a substitutionary clause, such as the one contained in Precedent No. 3, may be desirable, providing for the destination of the legacies in the event of the death of any of the legatees.

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It is generally best that household furniture and effects be either given in trust for sale, or bequeathed absolutely to the widow or other legatee. To create life interests in property of this kind is unsatisfactory; as it is difficult to protect the interests of the persons entitled in remainder; and as some articles become worn out, and are replaced by others, it is sometimes found impossible to distinguish, after the death of the life owner, which were included in the bequest, and which were purchased later. Moreover, the pleasure of ownership is deferred until the articles are worn and out of fashion.

The question, what investments should be authorized for a settled fund, demands caution and discretion.

The following are now authorized by Statutes 22 & 23 Vict. c. 35, s. 32; 30 & 31 Vict. c. 132, s. 2; and the Order of Court of 1st February, 1861, made in pursuance of Statute 23 & 24 Vict. c. 38, s. 10; and any of them not expressly excluded by the will may be adopted by the trustees—

Consolidated £3 per cent. Annuities.
Reduced £3 per cent. Annuities.
New £3 per cent. Annuities.
£2 10*s.* per cent. Annuities.
Exchequer Bills.
East India Stock and other securities, the interest of which is guaranteed by Parliament.
Stock of the Bank of England.
Stock of the Bank of Ireland.
Real securities in any part of the United Kingdom.

The 25th section of 23 & 24 Vict. c. 145, which authorized investment in any of the parliamentary stocks or public funds, or Government securities, was repealed by the "Conveyancing and Law of Property Act, 1881."

It will not generally be considered necessary in preparing a will to limit the application to it of the above Statutes and Order, except perhaps as regards real securities in Ireland, and (where the trust is likely to be of long duration) East India Stock. Where a convenient form of investment is desired, and one yielding a somewhat higher rate of interest than the Funds, railway debenture stock may sometimes be judiciously authorized, and in some cases even ordinary railway stock; but this last necessitates much judgment and discretion on the part of the trustees in regard to the railway to be selected. Investments involving personal liability should in all cases be avoided, as much in the interests of the trustees as of the *cestuis que trust;* and colonial or foreign government bonds transferable by delivery, in addition to the risk of their loss or destruction by fire, &c., have this disadvantage, that if one of the trustees gets them into his hands—a thing which may easily happen in the regular way of business—it may be difficult for the other trustees to obtain particulars concerning them, or to prevent their being dealt with without their concurrence. In the face of the severe lessons which English speculators have received during the last ten years, it is hardly necessary to recommend caution in authorizing investments in foreign bonds.

The power given to trustees by the Statute 23 & 24

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Vict. c. 145, s. 26, to apply the income of infants' property for their maintenance was taken exception to, so far as regards its application to contingent interests, on account of the words "the income to which such infant *may be entitled;*" it having been argued that where an infant's interest depends upon his attaining the age of twenty-one years, or upon some other uncertain event, he cannot be said to be *entitled* to any income until after the occurrence of such event, that is to say, until he has obtained a vested right to the capital.

This defect (supposing it to be such) is rectified by the "Conveyancing and Law of Property Act, 1881," which repeals and re-enacts the clause: substituting (section 43) for the words objected to in the previous Act, the words "the income of *that property*"—"that property" having reference to the commencement of the clause. "Where any property is held by trustees in trust for an infant, either for life or for any greater interest, and whether absolutely or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age." The clause, as it now stands, appears to be free from objection, and will be serviceable where brevity in a will is much desired; but, as a general rule, it may perhaps prove to be the best plan for the practitioner to confine his reliance on statutory clauses to technical matters, such as the appointment of new trustees, power to give receipts, &c., and to insert in the will itself all such clauses as relate to the practical guidance of the trustees; both for the greater convenience of reference, and because

non-professional persons usually feel more confidence when the will itself contains all directions with which they are personally concerned. Section 42 of the last-named Act, which supplies powers for the management of land during the minority of the owner or tenant for life, &c., was probably intended to apply to wills, as well as to settlements; but the framers of the Act would appear, in this instance, to have adopted the phraseology of the Settled Estates Act, without adopting its definition. In the Settled Estates Act the word "settlement" is defined to mean (amongst other things) a *will* under which hereditaments stand limited to or in trust for any persons by way of succession; but as no such meaning is given to the word in the definition clause of the Conveyancing, &c. Act, 1881, it seems to be necessary to take the word, as used in sub-sections 1 and 5 of section 42 of that Act, in its ordinary sense, viz., a family arrangement *inter vivos;* and consider that the section only includes settlements in that sense; unless indeed it be considered that the use of the word "instrument" (which includes a will as well as a deed) in sub-sections 7 and 8, affords sufficient ground for a wider construction of the word "settlement" as used previously.

As powers for advancement are not supplied by any statute, they must be expressly inserted in all cases when required.

The Conveyancing Act of 1881 also repeals, and by sections 31, 32, and 33, re-enacts, section 27 of Statute 23 & 24 Vict. c. 145 as to the appointment of new trustees, with the following additions,

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viz.: a trustee's residence out of the United Kingdom for more than twelve months is made a reason for appointing another trustee in his place; the question as to the power of increasing or diminishing the number is settled, by providing that the number may be increased, and that it shall not be obligatory to fill up the original number where there were originally more than two, but that, except where only one was originally appointed, there must be at least two; the provisions of the above sections are made to extend to the case of a trustee dying in the testator's lifetime; power is given to a trustee, where there are more than two, to retire, with the concurrence of his co-trustees and of the person empowered to appoint, if any, without any successor being appointed; but, on the other hand, a retiring trustee would seem to be deprived of the power which he had under the previous Act (where there was no person expressly nominated to appoint) of himself appointing a successor; unless he is the sole surviving or continuing trustee, in which case he would have the power under sub-sections 1 and 6 of sect. 31.

Section 35 supplies in the case of trusts, as well as of powers of sale, most of the ancillary powers and discretions as to selling together or in lots, by public auction or by private contract, &c., which were given in the case of *powers* of sale by 23 & 24 Vict. c. 145, s. 1; so that it is no longer necessary to enter into these details in a trust, any more than in a power; and where brevity is very much desired, they may be omitted.

The Act of 1881 also repeals s. 29 of 23 & 24 Vict. c. 145, as to trustees' receipts; and substan-

tially re-enacts it (s. 36), at the same time extending its operation to "securities or other personal property or effects," as well as money.

As section 30 enacts that trust and mortgage estates shall vest in the personal representatives, *notwithstanding any testamentary disposition*, it is no longer desirable, in the great majority of cases, to insert any devise of such estates in the will; as it is most convenient in all cases that mortgage estates, and in most cases that trust estates, should remain in the executors; and even if the testator wishes to vest his trust estates in other persons, this can no longer be carried into effect without a subsequent conveyance of the legal estate from the executors, in whom it necessarily vests in the first instance under the above enactment.

It is generally desirable that legacies to servants be given free of duty, because otherwise the duty at 10 per cent. makes a considerable difference in the amount payable to the legatee. Even legacies to relatives may sometimes be advantageously given duty free, if the total amount is not large in proportion to the general estate; but if, on the other hand, the amount of the legacies equals or exceeds the probable residue, the whole burden of the legacy duty should not be thrown upon the residue, without due consideration; and, in either case, instructions should, of course, be obtained from the testator on this point. Specific legacies should also generally be given duty free, for the obvious reason that the legacy itself supplies no fund out of which the duty may be paid. And it is especially desirable that the legacy be given duty free, where it is of great

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intrinsic value, such as a picture by one of the great masters, or some scarce manuscript, chiefly esteemed by the possessor perhaps from family associations; but yet, it may be, having a high market value as an antiquarian curiosity. It may here be mentioned that, as The Customs and Inland Revenue Act of 1881 renders legacies under twenty pounds liable to duty, there is now no object in giving legacies of nineteen guineas instead of twenty pounds.

Where it is intended that the trustees under a will should have a discretionary power of selling real estate, and investing in stocks, &c—the rents being applicable, in default of or until a sale, in the same way as the income of the investments would be when made, it is generally best that the trust should be peremptory, in the first instance, and a separate clause added empowering the trustees to postpone the sale, and directing that the property shall be considered as converted from the testator's death, or from other the period named in the first instance for the sale, and throughout the rest of the will the fund should be spoken of as personalty. Thus, in case of the death of any of the legatees, no question will arise between their real and personal representatives; a difficulty which might have arisen if the trust for sale had been discretionary in the first instance, and which would not have been obviated by the mere declaration that the property should be considered as converted in equity from the death, &c. (Jarman on Wills, vol. i. p. 551).

Where there are illegitimate children, whom it is intended to provide for; either an arrangement in the parents' lifetime, or a will, is indispensable,

since they can take nothing as heirs at law or next of kin: and, in the case of a will, it is very desirable that any such child should be so referred to, by name and otherwise, as to be clearly identified; *e.g.* "my illegitimate" *or* "my reputed son A. B.;" adding his address if he has a permanent abode. As a bequest in favour of illegitimate children can only include those who are in existence at the date of the will, there is no advantage in referring to the legatees as a class, except to prevent a lapse; but, if this plan be adopted, it would generally be desirable to restrict the class to include the children of a particular woman only, provided that the testator's wishes will be thereby carried out; and, in order to prevent misunderstanding, the class should also be expressly confined to children living when the will is made. And where legacies of moderate amount are bequeathed to such children, the testator, when giving his instructions, should be asked whether the legacy duty is to be paid out of the legacies, or out of the residue; because the duty, being in this case ten per cent., would be a considerable deduction from the legacy.

Again, it is absolutely essential that a person, who is himself illegitimate, should make a will; because, in the event of his dying intestate and without issue, his real estate will escheat to the lord of the fee, subject to the claim of his widow (if any) to dower, and the crown will be entitled to his personal estate, or to one half of it, if he leaves a widow; and although these rights are usually waived by the crown upon petition, still it would be obviously unwise to rely upon this; and besides, the person, who adminis-

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tered under grant from the crown, would be entitled beneficially to the whole personalty vested in him as administrator (Smith's Real and Personal Property, 3rd ed., p. 1127), a result which in many cases would fail to accord with the wishes of the deceased.

Where it is desired to give to several persons the benefit of certain real estate, it will generally be found most convenient to subject the property to a trust for sale. If the land is left in trust for the parties in specie, the devisees have all the inconveniences of joint or common ownership; that is to say, none of them can let the land, make improvements, eject a tenant, or perform other proprietary acts, without the concurrence of the others; whilst a partition is a troublesome and expensive operation in any case, and emphatically so, if any of the parties are dissentient or under disability. No doubt, there are cases in which the desire to keep certain property in a family will prevail over the above considerations; and where this is so, it may be suggested that the testator will probably save trouble to the devisees, by leaving separate portions of the property to different individuals; provided that the divisions of fields, &c., and the state of the property generally, are such as to admit of a nearly equal division: and any small inequality in value may be compensated, if considered desirable, by a pecuniary legacy, which can be charged, if there are no other disposable funds, upon the larger allotment, in augmentation of the smaller one. This last plan, however, is obviously inapplicable to a devise in favour of a fluctuating class, such as children, &c.

Where the will settles property which is subject

to mortgages or charges, there should be a power of sale for the purpose of paying them off: otherwise, in the event of the money being called in, there will be no means of raising it other than by the mortgagee exercising the power of sale given by the security,* a method to be always avoided if possible, as involving more interference with the estate by the mortgagees and their solicitors than is the case where the mortgagor's representatives have the conduct of the sale, and the mortgagee's solicitor has only to approve of the deed of conveyance, obtain his client's signature, and receive the mortgage money.

Care should always be taken that the powers given to trustees are sufficiently large to afford reasonable and proper scope for the exercise of their discretion; but on the other hand it is not generally desirable that the powers should be unusually wide. This remark especially applies to the subject of investment; as life owners naturally like those securities which pay a high interest, and which are therefore more hazardous than the securities usually adopted; and where investments of a speculative character are authorized, the trustees are in danger of being persuaded to act in opposition to their own judgment. One sometimes even meets with a power to advance part of a married woman's fortune to her husband on his personal security. This is in the highest degree objectionable, as it may render the provisions intended to protect the lady's interests

* The Settled Land Act, 1882, will enable the tenant for life to sell, in any such case arising after the 31st December, 1882; but not without the expense of Chancery proceedings similar to those now required in cases of sales under the Lands Clauses Act.

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entirely illusory; and it is doubtful whether a trust so modified has any other practical effect than to relax in the mind of the husband that feeling of responsibility for his wife's interests, which, if the fund had not been settled at all, he could have hardly avoided.

When alterations are required, it has to be considered whether they are to be carried out by codicil, or by altering and re-engrossing the will. If legacies are revoked, the latter plan is to be recommended, in order to save the feelings of the legatees. So also, if elaborate additions are to be made, or if the plan of the will is to be modified to any material extent; because the general scheme can be more conveniently and clearly gathered from one document than from two: but such matters as the appointment of an additional or substituted trustee, the addition of one or two legacies, or the increase of a legacy given by the will, may conveniently be done by codicil; more especially if the will happens to be too long to be quickly re-engrossed. When recommending that the will be written out afresh, it may be well for the solicitor to explain to the testator that this involves no more professional labour than the preparation of a codicil; since, to prepare a codicil with safety, it is necessary for the draftsman to thoroughly acquaint himself with the will, and to bear its various provisions in mind when drawing the later document.

In conclusion, we will venture to lay stress upon the great importance of clearness. Although the solicitor will not consider it beyond his province to give his opinion upon any scheme laid before him to carry out, apart from the merely legal aspect of the

matter, and to recommend any modifications which appear to him to be desirable, yet this part of the subject must mainly rest with the client: but that the intention may be clearly expressed, that the will may be easily interpreted and safely acted upon, without the advice of counsel or the assistance of the Court, this is the draftsman's business to see to. There is more in this matter of clearness than may at first sight appear; for, in settling any clause or provision in a will, we have to consider not merely the present circumstances, but the events which probably will, and the contingencies which without any great improbability may, occur in the future; and what operation of the will, under any of these probable or not very improbable combinations of circumstances, will be most in harmony with the testator's intentions, and lastly what form of words will clearly and unmistakeably have that operation. It is quite possible that a clause may seem clear on the surface of it; that is to say, it may provide for the existing state of affairs as regards the testator's family and property; and, assuming that these will always be similarly circumstanced, it may clearly provide for the carrying out of those immediate and principal objects which are present to the mind of the testator when he gives his instructions; nay, it may even go so far as to provide for all probable contingencies; and yet may fall short of the requirements of the case, in not regarding other contingencies, sufficiently improbable perhaps not to suggest themselves to the mind of an ordinary person, and yet falling so much within the scope of reasonable possibility as to be not capable of being safely disregarded.

I.

I. WILL *giving* ALL *the* TESTATOR'S PROPERTY *to* ONE PERSON.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of &c. I REVOKE all former wills made by me. I LEAVE ALL my property, both real and personal, to C. D., of &c. AND I APPOINT the said C. D. executor of this my will. IN WITNESS whereof I have hereunto set my hand, this —— day of ——, 18—.

Signed and acknowledged by the said A. B. as his last will and testament, in the presence of us, present at the same time, who at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses. } A. B.

[*Signatures, addresses, and descriptions of two witnesses*].

The above is a very concise form, adapted to the simplest case that can ever arise, viz., an absolute gift of all the testator's property to one individual.

It may perhaps be asked what is the use of the revocation clause, since if full effect be given to the words of the general

gift, all devises and bequests in any previous will must necessarily be superseded. The object of it is, to revoke any specific devise of real estate contained in a former will, and which, according to the case *Freeman* v. *Freeman*, 5 D. M. & G. 704, would not be revoked by a mere general devise in a later will.

In this instance, we have deviated from established usage, by substituting one word for the words "devise and bequeath" generally used—the one applying to real, and the other to personal estate. The word "give," which is sometimes used by recognised authorities as applying both to realty and personalty, seems more suited to transactions *inter vivos*; whereas the word "leave" possesses the same advantage as the former of combining the meanings of the two words "devise" and "bequeath," and at the same time is the word most frequently used in ordinary language in that sense. Instead of "all my property," many of the common forms say "all the property . . . of or to which I shall be seised, possessed or entitled at the time of my decease, or which I shall then have power to appoint by will." But, having regard to sections 24 and 27 of the Wills Act, and the decisions upon sect. 24 in the cases *O'Toole* v *Browne* (3 E. & B. 572), and *Stokes* v. *Salomons* (15 Jur. 483), the above words may be considered unnecessary.

With regard to the devise of trust and mortgage estates hitherto usually inserted in wills, the following enactment is contained in the Conveyancing and Law of Property Act, 1881, sect. 30:—"Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents but subject

I. to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and for the purposes of this section, the personal representatives for the time being of the deceased shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers."

A devise of trust and mortgage estates therefore is now uncalled for and useless, except that, in the case of trust estates only, the devisees might perhaps have the right to claim a conveyance to themselves from the executors: but if the testator wishes to vest the trust estates in some other persons than his executors, it would be better to insert not a devise, which would now be inoperative to pass the legal estate, but rather a *direction* to the executors to convey to the intended successors in the trusteeships.

It is a matter for regret that so long a form of attestation as the above should have grown into use; since, in the case of a will hastily prepared for a dying testator, much valuable time would be lost in writing it out. We have seen the following form suggested, "Signed by the said A. B. in our presence, and by us in his presence."

This would appear to meet the requirements of sect. 9 of the Wills Act; but the officials at the Probate Court are so much accustomed to the longer form, that they would hardly allow a will having a shorter attestation to be proved, without an affidavit of due execution. It will be necessary, therefore, to use it until a shorter form has been sanctioned by a decision of the Court. In order to dispose of land in a foreign country, whether held absolutely or for a term of years, &c., the will must be executed in accordance with the law of the country where such land is situate.

In order that a will by a seaman or marine in the Royal Navy may be effectual to dispose of pay, prize-money, &c., payable by the Admiralty, or effects or money in charge of the Admiralty, not only must the requirements of the Wills Act as to execution be complied with, but it is also necessary that one of the attesting witnesses shall be, where the will is made on board one of Her Majesty's ships, a commissioned officer, chaplain, or warrant or subordinate officer of the naval, marine, or military force, and, where the will is made elsewhere, either such a person as above, or the governor, agent, physician, surgeon, assistant surgeon, or chaplain of a naval

hospital at home or abroad, a justice of the peace, minister of a place of worship in the parish where the will is executed, British consular officer, officer of customs, or notary public: except where the testator is a prisoner of war, in which case the will may be made either according to the forms required by the law of the place, or according to the forms required by the law of England, or in writing signed by the testator and attested by *one* witness being a naval or military officer or chaplain, a warrant or subordinate officer of the navy, the agent of a naval hospital, or a notary public (28 & 29 Vict. c. 72). But subject to the above exception as regards the Royal Navy, and subject to kindred provisions in the Merchant Shipping Act as regards wages and effects under the control of the Board of Trade, officers and seamen of either the navy or the merchant service being at sea, or military officers and soldiers on actual military service may dispose of any personal property by a will in their own handwriting, without any witnesses, and even unsigned, or even by a will written by another and unsigned by the testator, if proved to be according to his instructions, and approved by him, or by a will declared by the testator *in extremis* before witnesses, and *afterwards* reduced to writing (Wills Act, s. 11; 29 Car. II. c. 3; Black. Comm. 2, 499–501). I.

II.

Devise, *&c.*, *to* Two Persons. II.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of &c. I REVOKE all former wills made by me. AND I DEVISE all my real estate and bequeath all my personal estate UNTO C. D., of &c., and E. F., of &c., absolutely to be equally divided between them. AND I APPOINT the said C. D. and E. F. executors of this my will. IN WITNESS, &c.

Words of equality or division create a tenancy in common (Jarman on Wills, 2, 237).

III. original and accruing share or shares shall go and belong to his or her respective surviving brother and sister or sisters, or brother, or sister, to be equally divided between them if more than one, and in the case of the said R. B., or the said S. B., his or her share shall go and belong to the survivor of them the said R. B. and S. B., and my said cousins; to be equally divided between them; but for the purpose of such division as last aforesaid, my said cousins the children of my uncle H. B. shall together be considered as only one person, and my said cousins the children of my uncle N. B. shall together be considered as only one person. PROVIDED ALSO that in case any one or more of the aforesaid legatees shall die in my lifetime leaving issue, who shall be living at my decease, then the original and accruing share or shares, to which each or any such legatee would have been entitled if living at my decease, shall go and belong to his or her children living at my decease, and the issue then living of any child or children of such legatee who shall be then dead; to be equally divided between them; the issue, if more than one, of each or any deceased child taking equally between them the share or shares only to which their parent would have been entitled if living. AND I APPOINT the said B. C. and C. D. executors of this my will. IN WITNESS, &c.

Clause substituting the issue of legatees who die in testator's lifetime leaving issue.

Appointment of executors.

Referring to the trust for sale in the above precedent; the words within brackets are now supplied by sect. 35 of the Conveyancing and Law of Property Act, 1881, and may be omitted where brevity is desired. D. E. and E. F. are here supposed to be the brother and sister of the testator's mother, and the other legatees relatives on the father's side. It will be observed that the clause of accruer is only made to operate

within the family, and in case of cousins, within the branch of the family, to which the deceased legatee may belong. III.

It is supposed that the testator is a young man, and that some of the legatees live at a distance; and the reasons for the insertion of the two final clauses are that it is not improbable some changes may take place in the two families before his death, and may fail to come to his knowledge; and in case, for instance, of the death of one of the cousins in the testator's lifetime, whether leaving children or not, his share, in the absence of some such provision as above, would lapse, and vest in the uncles and aunts, as the testator's next of kin.

The legatees are supposed to be all of age, and therefore capable of dealing with their shares by will: hence the clauses of accruer and substitution are not made to extend to the case of their death after the testator; as, in that case, their shares would vest in their personal representatives as part of their general personal estate, and would either pass by will, or, in case of intestacy, would go to their wives and children, or other next of kin.

If the executors were well acquainted with the families of H. B. and N. B., so that there would be no danger of any uncertainty existing at the testator's death as to what children, and issue of deceased children, of those persons were living, the bequests to the cousins might be made to them as a class, thus:—

"Three twentieth parts to the children of my uncle H. B., late of ——, deceased, who shall be living at my decease, and the issue then living of any children of the said H. B. who shall be then dead; to be equally divided between them; the issue, if more than one, of each or any deceased child taking equally between them the share only to which their parent would have been entitled if living; three twentieth parts to the children of my uncle N. B.," &c., &c.

And the clauses of accruer and substitution might be omitted; thus materially shortening the will.

IV.

IV. WILL *of a* MARRIED MAN. FURNITURE *to* WIFE. LEGACIES *to* WIFE, SERVANT, *and* CHILDREN. RESIDUE *to be sold.* INCOME *to* WIFE *for life, she maintaining and educating Children.* CAPITAL *amongst Children, who, being Sons, attain twenty-one, or, being daughters, attain that age or marry. Maintenance and Advancement clauses, &c.*

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of &c. I BEQUEATH all my household furniture, plate, linen, china, wearing apparel, jewelry, books, pictures, wines, consumable stores, and other household effects to my wife C. B., absolutely. I ALSO BEQUEATH to my said wife the legacy of £——, to be paid within one month after my decease. I BEQUEATH to my servant C. D., in case he shall be in my service at my decease, the legacy of £——. AND I BEQUEATH to my child or each of my children living at my decease, who being a son or sons shall then have attained or shall afterwards attain the age of twenty-one years, or being a daughter or daughters shall then have attained that age or married, or shall afterwards attain that age or marry, the legacy of £——, to be paid on the day of each such child attaining the said age of twenty-one years respectively, or in case of the death of a married daughter before she shall have attained the said age, then to be paid to the person or persons claiming through or under her as soon as conveniently may be after her decease.

Bequest of household furniture and effects to wife.

Legacy to wife.

Legacy to servant.

Contingent legacies to children.

IV.

AND I DIRECT that no one of the said legacies of £—— each shall carry interest, except for the purpose hereinafter mentioned, until the child contingently or absolutely entitled to the same respectively shall have attained his or her age of twenty-one years. AND I DEVISE all my real estate (except estates vested in me as a trustee or mortgagee, which will vest in my personal representatives under the Conveyancing and Law of Property Act, 1881, section 30), and I bequeath all my personal estate, not hereinbefore bequeathed, unto my friends E. F., of &c., and G. H., of &c., their heirs, executors, and administrators, UPON TRUST that the said E. F. and G. H., or the survivor of them, or other the trustees or trustee for the time being of my will, all of whom are hereinafter referred to as "my trustees," shall as soon as conveniently may be after my decease sell my said real estate [together or in lots, by public auction, or by private contract, and subject or not subject to any special conditions of sale, and with full power to give receipts, which shall exonerate purchasers from all liability to see to the application of the moneys therein expressed to be received], and shall convey the premises sold to the purchaser or purchasers thereof respectively; AND SHALL ALSO sell, get in, and convert into money all such parts of my personal estate hereby bequeathed upon trust as shall not consist of money; AND UPON FURTHER TRUST that my trustees shall, out of the proceeds of sale and conversion of my said real and personal estate, or out of any moneys belonging to me at my decease, pay my debts, funeral and testamentary expenses, the legacies hereby

Legacies to children not to carry interest until age of twenty-one.

Devise of realty and residue of personalty to trustees;

Upon trust for sale and conversion.

To pay debts, funeral and testamentary expenses, and the pecuniary legacies

IV. bequeathed to my said wife and the said C. D., and the aforesaid legacies to my children or such if any of the last named legacies as shall then be payable; AND SHALL INVEST the residue of the said proceeds of sale and conversion, and other moneys, in any of the public stocks or funds of Great Britain, or in real securities in England, but not in Ireland, or in the debentures or debenture stock of any railway company or companies in Great Britain, with power for my trustees at their discretion to vary and transpose such stocks, funds, and securities for any other stocks, funds, or securities of the kinds hereinbefore prescribed; AND SHALL, from time to time, by sale of a sufficient part of the said stocks, funds, and securities, raise and pay the aforesaid legacies to my children, or such if any of the same legacies as shall for the time being remain unpaid, when and as the said legacies shall respectively become payable under this my will; AND SUBJECT THERETO, UPON TRUST that my trustees shall pay the annual income of the said stocks, funds, and securities to my said wife during her life, she thereout maintaining, educating, and bringing up my children for the time being under the age of twenty-one years; AND AFTER the decease of my said wife, my trustees shall stand possessed of the said trust moneys, and the stocks, funds, and securities, whereon the same shall for the time being be invested, IN TRUST for my child, or all my children, living at my decease, who being a son or sons shall then have attained or shall afterwards attain the age of twenty-one years, or being a daughter or daughters shall then have attained that age or married, or shall afterwards

payable on testator's death; And invest residue;

And, from time to time, to raise and pay other legacies.

Income to wife, she maintaining infants.

After wife's decease, the fund to be

In trust for children, who being sons attain twenty-one, &c.

IV.

attain that age or marry, and if more than one, to be equally divided between them, the share of each of my children in the said trust premises to be paid or transferred to him or her on the day of his or her attaining the said age of twenty-one years, or in case of the death of a married daughter before she shall have attained the said age, then to be paid to the person or persons claiming through or under her as soon as conveniently may be after her decease. AND I DECLARE that it shall be lawful for my trustees, after the decease of my said wife, to apply all or any part of the income of the said legacy of £——, and of other the share of the said trust moneys, stocks, funds, and securities, to which each or any child of mine shall, for the time being, be contingently or absolutely entitled, for or towards the maintenance and education, or otherwise for the benefit of such child, so long as he or she shall be under the age of twenty-one years. AND I ALSO DECLARE that it shall be lawful for my trustees, in their absolute discretion, either during the lifetime of my said wife, or after her decease, to apply any part not exceeding one-half of the said legacy of £——, to which each or any child of mine shall for the time being be contingently entitled in or towards his or her advancement in life. AND I ALSO DECLARE that if the said trustees hereby constituted, or either of them, shall die in my lifetime, or if they, or either of them, or any trustee or trustees for the time being of my will, shall after my death die, or be abroad, or desire to be discharged from, or refuse, or become incapable to act in, the trusteeship of my will, it shall be lawful for my said wife, during her

Maintenance of infant children, after death of wife.

Advancement during life of wife or afterwards.

Power for wife, &c., to appoint new trustees.

IV. life, and after her death, for the surviving or continuing trustee for the time being, or for the acting executors or executor, administrators or administrator, of the last surviving or continuing trustee, by deed, to appoint a new trustee or new trustees in the place of the trustee or trustees so dying, or being abroad, or desiring to be discharged, or refusing, or becoming incapable to act, as aforesaid; and upon every such appointment, the trust property shall be transferred, so that the same may be vested in the new trustees or trustee, either solely, or jointly with the surviving or continuing trustee, as the case may require. I APPOINT the said E. F. and G. H. executors of this my will, and I appoint my said wife, during her life, and after her decease, the said E. F. and G. H. guardian and guardians of my children, during their respective minorities. AND I revoke all wills and codicils previously made by me. IN WITNESS, &c.

Appointment of executors and guardians.

The custom of making legacies and shares of residue vest, in the case of sons, at the age of twenty-one, and in the case of daughters, at that age or marriage, is well established, and the reason for it is obvious; viz., on the one hand, to avoid the expense of taking out administrations to the estates of those who die at an earlier date, as would be necessary if legacies, &c., were made to vest at birth, and, on the other hand, to make a provision for daughters who marry, even if under age.

Sometimes the interest of the wife, and her guardianship of the children, are made to cease on her marrying again, on the ground that she might, in that event, no longer have a single eye to the children's interests; but this is a matter on which the views of different testators will naturally vary.

Although however, in the precedent, the income of the residue is given unconditionally to the wife for life, yet the interests of the children are in some measure secured by their

legacies being made payable immediately on their attaining majority, whether before or after the wife's death, with power to advance one half for apprenticeship fees, and kindred purposes, even before the time of vesting; a provision to start them in life being thus secured for them, independently of the wife. It will also be seen that the maintenance and education of the children are left to the wife alone, during her life; thus avoiding any conflict of authority between her and the trustees: and that, in order to avoid any question, as to payment of a legacy, share of settled fund, or income, arising between the trustees and the husband of an infant daughter, the actual payment of such daughter's legacy or share is postponed until her majority, whilst the provisions for maintenance, &c., extend in all cases to the age of twenty-one. The postponement of the payment of an infant married daughter's legacy or share would, of course, not prevent her making a settlement on marriage by leave of the Court under 18 & 19 Vict. c. 43.

It is not unusual to make the wife a trustee; but it is open to this objection in a case like the present, where she is tenant for life of the trust fund, viz., that if she happens to survive her co-trustees, the trusteeship and the life interest become vested in the same person; and even where this does not happen, the other trustees are apt to leave the management of the fund in the hands of the widow as the person chiefly interested, and the estate is thus left without adequate protection. If, however, it is determined to make the widow a trustee, there ought to be at least two others, of whom one should be a young man.

With regard to the investments named above, it will of course be borne in mind that, under 22 & 23 Vict. c. 35, 23 & 24 Vict. c. 38, the Order of Court made in pursuance of the latter statute, and 30 & 31 Vict. c. 132, the trustees would also be empowered to invest in real securities in Scotland, Stock of the Bank of England or Ireland, East India Stock, or securities the interest of which is guaranteed by Parliament. Some of the forms in modern books of precedents expressly prohibit investment on real securities in Ireland; and, although in practice, this prohibition has not hitherto been much used, yet it seems rather to be recommended at the present time, not merely because the trustees would otherwise

IV. be empowered to lend on leaseholds for lives perpetually renewable at a head rent, a very common form of tenure in the sister island, but because of the frequent refusal of Irish tenants to pay rent, and the dangerous position of a mortgagee owing to the wide and undefined powers now possessed by the Sub-Commissioners under the Land Law Act of 1881 in regard to reductions.

In the case of a trust likely to endure for many years, it might be worth consideration whether East India Stock should not also be prohibited.

When there are infant children, it should always be remembered to appoint guardians; as in default of this, an application to the Chancery Division would be necessary in the event of the infants acquiring property under an intestacy, or under some will or settlement, &c., which did not provide for the management of the property and the application of the income during their minority. No doubt, the mother would be guardian for nurture without any appointment; but guardianship for nurture extends to the person only, not to the property, and ceases at the age of fourteen.

V.

V. WILL *bequeathing* PERSONAL ESTATE *to* TESTATOR'S WIFE *absolutely, and devising certain specified* REAL ESTATE *to* TRUSTEES, IN TRUST *for* WIFE *for* LIFE, *and afterwards for* SALE *and* DIVISION *amongst* CHILDREN.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of, &c. I BEQUEATH all my personal estate unto my wife C. B., for her own absolute use and benefit. I DEVISE my three freehold closes of land, situate in the parish of ——, in the county of ——, now in the occupation of ——,

Personal estate to wife.

Devise of certain real estate to trustees;

V.

unto and to the use of my friends C. D., of, &c., and E. F., of, &c., their heirs and assigns; UPON TRUST to pay the rents and profits thereof unto, or permit the same to be received by, my said wife, during her life; AND after her decease, upon trust to sell the said closes of land, either together or in parcels, and either by public auction or by private contract, and to pay and divide the net proceeds of such sale unto and equally between my children who shall be living at the decease of my said wife, and the issue, then living, of my child or children who may be then dead; SUCH ISSUE to take the share, or respective shares, to which his, her, or their parent or ancestor, or respective parents or ancestors, would have been entitled if living respectively; the issue (if more than one) of any one child of mine taking equally among themselves. AND I appoint my said wife, and the said C. D. and E. F., executors of this my will. IN WITNESS, &c.

Upon trust for wife for life;

After her decease, upon trust to sell,

And divide proceeds among testator's issue then living, *per stirpes*.

Appointment of executors.

A short will is often desirable: and the above slightly altered copy of a will, which was found to work well in practice, is here given as an example.

The children were probably of age at the date of the will. Otherwise an appointment of guardians should have been inserted; but not necessarily a maintenance clause, since the "Conveyancing and Law of Property Act, 1881," would supply the necessary powers, and again the chances in such a case would generally be in favour of the children all coming of age before the wife's death.

The words "or ancestor," following the word "parent" in the final trust, are rendered necessary by the decision in *Sibley* v. *Perry*, 7 Ves. 522, in order to give full effect to the clause, in case any of the testator's children should be dead at the time of distribution, leaving only *grandchildren* then sur-

V. viving. In that case, supposing the word "parent" were alone used, as in most of the common forms, the correlative term "issue" would be held to be thereby explained as intended to include only children, and consequently the grandchildren would take nothing under the will. The contingency here referred to is, no doubt, a somewhat remote one, and there is room for difference of opinion as to whether it is worth regarding as a practical matter.

VI.

VI. WILL *of a* YEOMAN. TESTATOR'S WIFE *to occupy* DWELLING-HOUSE, *and have use of* FURNITURE *until* TESTATOR'S *only* SON *attains Twenty-five, or, in case of his* DEATH *under that age, then during her* LIFE; *and receive* ANNUITY *for* LIFE, *she continuing* TESTATOR'S WIDOW. *Subject thereto,* REAL ESTATE *to* TESTATOR'S SON *for* LIFE, *with* REMAINDER *to his* CHILDREN, *&c. If no* CHILDREN, *&c., to* TESTATOR'S DAUGHTERS *as tenants in common.* PERSONAL ESTATE *to* TRUSTEES; IN TRUST *for conversion* (*other than* FARMING STOCK, FURNITURE, *&c.*) *and to apply proceeds, so far as they will extend, in* PAYMENT *of* DEBTS, *&c. To raise sufficient to pay* BALANCE *of* DEBTS, *&c., by* SALE *or* MORTGAGE *of* REAL ESTATE. *Until* SON *attains Twenty-five,* TRUSTEES *to carry on* FARM, *&c., apply ncome in maintenance, &c., of* SON *and* DAUGHTERS, *and raise portions for* DAUGHTERS *at Twenty-one or marriage. On* SON *attaining Twenty-five,* PERSONAL ESTATE *to be in trust for*

SON *absolutely. Power for* SON *to jointure a* WIFE. *Usual powers and clauses.* VI.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of the —— farm, in the parish of ——, in the county of ——, Yeoman. I APPOINT my wife C. B., and my friends C. D., of, &c., and E. F., of, &c., trustees, and executrix and executors, of this my will, and guardians of my children during their respective minorities: BUT if my said wife shall marry again, she shall thereupon cease to be such trustee, executrix, and guardian as aforesaid, and the powers and trusts of this my will shall thenceforth be exerciseable by, and my personal estate hereinafter bequeathed to my said wife and the said C. D. and E. F., upon the trusts hereby declared, shall thenceforth vest in the trustees or trustee for the time being of my will other than my said wife. AND I DECLARE that the expression "my trustees," wherever the same is used in this my will, shall be taken to mean the trustees or trustee for the time being of this my will. I DEVISE my messuage or tenement, with the farm and other buildings and appurtenances, and the closes and other parcels of land, thereto belonging, known as the —— Farm, situate in the parish of ——, in the county of ——, AND all other my real estate (except estates vested in me as a trustee or mortgagee) unto my son D. B., his heirs and assigns, To such uses, for such estates, and in such manner, as my trustees shall, from time to time, by any deed or deeds, appoint; AND in default of such appointment, and so far as no such appointment shall

Appointment of wife (during widowhood) and two others, trustees, executors, and guardians.

Explanation of the term "my trustees."

Devise of farm, and other real estate, to uses.

Power to trustees; subject thereto.

VI.

As to the dwelling-house:

To the use that widow may occupy, &c.

As to other real estate: To the use that wife may receive an annuity, during widowhood;

As to the whole real estate, subject, &c., To son for life;

Remainder to his issue, as he appoints;

extend, To THE USES hereinafter declared, namely; As to and concerning the dwelling-house on my said farm at ——, with the garden and appurtenances thereto belonging, but not including the farm yard and farm buildings, To THE USE that my said wife shall be allowed personally to occupy the same, until my said son shall have attained the age of twenty-five years, if she shall so long continue my widow, or, in the event of the death of my said son under the said age, then during her life, if she shall so long continue my widow; AND as to and concerning all other my real estate, To THE USE that my said wife may receive out of the rents and profits thereof an annuity, or yearly sum, of £——, during her life, if she shall so long continue my widow; to be payable half yearly, without deduction, the first payment thereof to be made at the end of six calendar months from the date of my decease; AND to the further use that my said wife may have the same or the like remedy by distress for the recovery thereof, as landlords have for the recovery of rent in arrear upon common leases; AND as to and concerning all my said real estate, subject as aforesaid, and subject to the powers and directions hereinafter contained, To THE USE of my said son during his life without impeachment of waste; AND after his decease, To THE USE of all or any or such one or more of the children and other issue of my said son, such other issue to be born in the lifetime of my said son, for such estate or estates, interest or interests, in such shares if more than one, chargeable in such manner, and with such provisions for the management of my said real estate, and the main-

VI.

tenance of all or any of such children and other issue, during minority, and other powers and provisions, as my said son shall, by any deed or deeds, or by his last will, appoint; AND in default of such appointment, and so far as no such appointment shall extend, TO THE USE of the children of my said son, who shall be living at his decease, and the children then living of any children of my said son, who shall be then dead, and their heirs and assigns, equally as tenants in common; the child or children of every deceased child of my said son, taking by substitution, and if more than one as tenants in common, the share only which his, her, or their respective parent would, if living, have taken. PROVIDED ALWAYS that the shares, original and accruing, of any persons who, under the last preceding limitation, shall on the death of my said son, have become entitled to shares of my real estate, and who shall afterwards die under the age of twenty-one years without leaving issue living at their deaths respectively, shall accrue as follows, namely, IN the case of any child of my said son, or any sole or sole surviving child of a deceased child, of my said son, TO THE USE of the other persons who shall have become entitled under the said limitation as aforesaid, *per stirpes;* AND in the case of any child (other than a sole or sole surviving child) of a deceased child of my said son, TO THE USE of the other children of the same deceased child of my said son, who shall have been entitled as aforesaid, and their heirs and assigns equally as tenants in common. BUT in case there shall be no child or grandchild of my said son living at his, my said son's decease, or in case no such child or grandchild shall

If no appointment, &c. To the son's issue, *per stirpes.*

Cross limitations, in the event of deaths under age, without leaving issue.

If son leaves no issue, &c.

VI. live to attain the age of twenty-one years, or die under that age leaving issue living at his or her death, THEN I DECLARE that all my said real estate shall be and remain, To THE USE of my daughters, E. B., F. B., and G. B., their heirs and assigns, equally as tenants in common. AND I BEQUEATH all my farming stock, implements of husbandry, household furniture, plate, linen, china, moneys, and securities for money, and all other my personal estate, UNTO the said C. B., C. D., and E. F., their executors, administrators, and assigns: AND I DECLARE that my said personal estate is hereby bequeathed to the said C. B., C. D., and E. F., and that the power of appointment over my said real estate hereinbefore vested in my trustees is so vested in them, UPON TRUST to carry out the directions hereinafter contained. I DIRECT my trustees to permit my said wife to have the use and enjoyment of my household furniture, plate, linen, china, and other household effects, until my son shall have attained the age of twenty-five years, if she shall so long continue my widow, or in the event of the death of my said son under the said age, then during her life, if she shall so long continue my widow. AND I FURTHER DIRECT my trustees to sell, call in, and convert into money, all such parts of my personal estate as shall not consist of money, other than the said farming stock and implements of husbandry, household furniture and effects, and other than the capital which at my decease shall be used in my farming business; AND to apply the proceeds of such sale, calling in and conversion, and the ready money which shall belong to me at my decease, in or towards the payment of my debts,

Real estate to daughters.

Bequest of personal estate to the trustees.

Widow (remaining single) to have use of furniture, &c., until son twenty-five, &c.

Personal estate, with exceptions, to be converted.

Proceeds to be applied in or towards payment of debts, &c.

VI.

funeral, and testamentary expenses; AND I FURTHER DIRECT my trustees, by sale of any part, or mortgage of all or any part of my said real estate, other than my said dwelling-house and garden and the farm yard and farm buildings belonging to the said farm, or both by such sale and such mortgage as aforesaid, to raise and pay such portion of the said debts and expenses as the said personal estate directed to be sold and converted as aforesaid, and my ready money shall be insufficient to meet. AND I DIRECT my trustees, until my said son D. B. shall have attained the age of twenty-five years, or in the event of his death under that age, then until my children who for the time being shall be living, shall all have attained the age of twenty-one years, to enter upon and take possession of all my said real estate (but subject, as regards my said dwelling-house, garden, and appurtenances to the use in favour of my said wife hereinbefore declared) and to carry on my farming business at —— Farm aforesaid: AND I EMPOWER my trustees, for the purpose of carrying on my said farming business, to use and employ my agricultural implements, and live and dead farming stock, and the residue of the said proceeds of sale and conversion and ready money; and any portion of the said proceeds of sale, and conversion, and other money not so applied shall be invested in any of the stocks, funds, or securities in which trustees are allowed by law to invest trust funds: AND in case my trustees shall, in their discretion, consider it necessary or desirable to raise any additional capital for the purpose of carrying on my said farming business, then I direct them my trustees, by sale of

Deficiency, if any, to be raised by sale or mortgage.

Trustees to carry on farm until son twenty-five, &c.

Power to raise additional farming capital.

VI. any part, or mortgage of all or any part, of my said real estate, other than my said dwelling-house and garden, and the farmyard and farm buildings belonging to the said farm, or both by such sale and such mortgage as aforesaid to raise any sum or sums not exceeding in the whole the sum of £——, and apply such sum or sums for the purpose last aforesaid.

The trustees, out of income, to pay wife's annuity;

And I DIRECT my trustees, by and out of the income derived from the carrying on of the said farming business, and other the income of my residuary real and personal estate, firstly to pay the said annuity of £—— to my said wife, and subject as aforesaid, to apply the whole, or such part as they my trustees may think fit of the said income, for the maintenance, education, and bringing up of my said son, so long as he shall be under the age of twenty-five years, and of my said daughters, and each of them, whilst under the age of twenty-one years and unmarried.

And apply whole or part of residue for maintenance, &c., of son and daughters.

Trustees to raise and pay to each daughter on her attaining twenty-one, or marriage, a certain sum.

And I FURTHER DIRECT my trustees, when, and as my said daughters shall respectively attain the age of twenty-one years, or marry, to raise by sale of any part, or mortgage of all or any part, of my said real estate, other than my said dwelling-house and garden, and the farmyard and farm buildings belonging to the said farm, or both, by such sale and such mortgage as aforesaid, and pay to each of my said daughters the sum of £——, the same to be for the separate use of each such daughter, independent of the debts, control, and engagements of any husband whom she may marry, and her receipt alone shall be a sufficient discharge for the same.

On son attaining twenty.

And so soon as my said son shall have attained the age of twenty-five years, I direct

VI.

that, subject as aforesaid, my trustees shall stand possessed of my said farming stock, implements of husbandry, household furniture, and effects, and also of all moneys for the time being in their hands, and all other my personal estate, IN TRUST for my said son absolutely: BUT in case my said son shall die under the said age of twenty-five years, then my trustees shall stand possessed of all my personal estate (but subject as regards my household furniture and effects to the direction concerning the same hereinbefore contained and otherwise subject as aforesaid) IN TRUST for my said daughters absolutely, to be equally divided between them. AND I HEREBY DECLARE that it shall be lawful for my said son, after he shall have attained the age of twenty-five years (but subject to the power of appointment hereby vested in my trustees, and the estates limited in exercise of such power) by deed or will, to appoint to any woman whom he may marry or have married, for her life, any yearly rent-charge by way of jointure, and in bar or without being in bar of dower, not exceeding the yearly sum of £——, to be charged upon all, or any part of, my said real estate, and to be paid at such times, and in such manner, as he my said son shall direct; AND to appoint to such woman usual powers and remedies for recovering, and enforcing payment of such rent-charge, by distress and entry upon, and perception of the rents and profits of, the premises charged therewith; AND ALSO to appoint the premises so charged to any person or persons, for any term of years, with or without impeachment of waste, to commence from the decease of my said

five, personal estate to be in trust for him absolutely.

But if he dies under twenty-five, in trust for daughters.

Power for son to jointure a wife.

VI. son, upon such usual trusts for better securing the payment of the same rent-charge as my said son shall think fit. AND I DECLARE that the said power of jointuring may be exercised as often as my said son shall marry. I DECLARE that the directions hereinbefore contained to raise money by sale or mortgage, or by sale and mortgage, for the several purposes hereinbefore mentioned, shall be deemed to authorize the mortgage and subsequent sale of the same part or parts of my said real estate for all or any one or more of such purposes as aforesaid, if my trustees shall think fit. I DECLARE THAT [any sale of any part of my said real estate may be effected by my trustees either together or in parcels, and either by public auction or private contract, and with power to them my trustees to buy in the premises at any sale by auction, or to rescind any contract, either on terms or gratuitously, and afterwards to resell or mortgage the premises, without being answerable for any consequent loss; and to execute all deeds and assurances necessary or expedient for effectuating any such sale or mortgage; and in particular that] every such mortgage as aforesaid may contain such power of sale, and other powers and clauses, as my trustees may consider reasonable. AND I DECLARE that on any sale or mortgage being made by my trustees in exercise of the power of appointment hereby vested in them, the purchaser or mortgagee shall not be obliged or concerned to ascertain the occurrence or existence of any event or purpose, in or for which a sale or mortgage is hereby directed to be made, or otherwise to inquire into the necessity or propriety of such sale or mort-

Trustees may mortgage, and afterwards sell.

Sale may be together or in parcels, &c.

A mortgage may contain a power of sale.

Purchasers' and mortgagees' indemnity clause.

VI.

gage. AND I DECLARE that in case any part of the real estate hereinbefore charged with an annuity of £—— in favour of my said wife shall be sold by my trustees pursuant to the power and directions herein contained, or in case any part of such real estate, having been mortgaged by my trustees pursuant to the same power and directions, shall be afterwards sold, or the mortgage thereof foreclosed, or possession thereof taken by the mortgagee or mortgagees thereof, then and thenceforth the said annuity of £—— shall be charged upon the other and remaining part of the said real estate hereinbefore charged therewith, to the exclusion of the part thereof which shall have been sold as aforesaid, or whereof such mortgage as aforesaid shall have been foreclosed, or whereof possession shall have been taken as aforesaid, and with the like power of distress as is hereinbefore given with reference to the whole of the real estate hereinbefore charged with the said annuity. I EMPOWER my trustees, so long as my said son shall be under the age of twenty-five years, or in the event of his death under that age, then so long as any of my said daughters shall be under the age of twenty-one years, generally to manage my said real estate, to engage bailiffs, servants, and labourers on my said farm, to cut timber for repairs or sale, to insure, and to pay all other charges and outgoings, and also (but without prejudice to the right of my said wife to occupy the said dwelling-house and premises as hereinbefore specified) to let any portion of my real estate, which they my trustees shall not think fit to occupy as part of the said farm, either from year to year, or for any term

In case of a sale, &c., wife's annuity to be charged on the remaining portion.

Powers of management of real estate.

VI. not exceeding seven years in possession, at the best rent that can reasonably be obtained for the same.

Nomination of wife as the person to appoint new trustees under the statute.

I DECLARE that my said wife, during her widowhood, shall be the person having power under the Conveyancing and Law of Property Act, 1881, section 31, to appoint a new trustee or new trustees of this my will, in the place of any trustee who shall be dead, or who shall remain out of the United Kingdom for more than twelve months, or shall desire to be discharged from the trusts or powers of my will, or shall refuse or be unfit to act therein, or be incapable of acting therein.

Revocation of former wills.

AND HEREBY REVOKING all former wills made by me, I DECLARE this to be my last will and testament.

IN WITNESS, &c.

The limitations in the above will are so contrived as to give the trustees full powers of management until the testator's son attains the age of twenty-five years, and also powers to raise money by sale or mortgage for the payment of debts and other purposes, and at the same time to vest the legal estate in the son and his successors in title. If the real estate had been devised to the trustees upon trust to raise money by sale or mortgage, and subject thereto to the uses specified, then the trustees, being devisees to uses with active duties to perform, would have taken the legal estate (Jarman on Wills, 3rd ed. vol. ii. p. 270), the trusteeship would have been prolonged for another generation, and a conveyance of the legal estate to the persons ultimately becoming entitled would have been necessary.

In settling real estate for the benefit of a person as tenant for life and his children, &c., equally, a plan more generally adopted than the above is to limit the property in remainder to the *children* only as tenants in common—not the children and issue of deceased children and not to name any period for ascertaining the class. This has the advantage of greater simplicity; and as such a general trust for children, without

anything to narrow the application of the word, would include all children who were living at the death of the testator, and all others who came into existence prior to the death of the tenant for life, so that the shares of those who died in the meantime would devolve on their heirs-at-law or devisees (Jarman, vol. ii. pp. 143, 144), it would, in most cases, answer the purpose. But the form used above has the advantage of showing on the face of the will, and without any necessity for legal advice, the persons who in any event will be entitled. VI.

It should be borne in mind that as there can be no remainder after a fee simple, the expression "cross-remainder" is inapplicable to the case of a limitation between tenants in common in fee simple, which can only take effect by creating executory interests. The expression "cross limitation" or "cross executory limitation" should therefore be used instead of "cross remainder." As the son does not receive any settled provision until he arrives at the age of twenty-five, he would not be likely to marry under that age, and therefore the contingency of his leaving great grandchildren is even more remote than in an ordinary case; hence the trust for his family is made to include only his children and "*children*" (not "*issue*") of deceased children; the word "children" being more definite than "*issue*," and bearing moreover, as explained at page 37, the same meaning as the word "issue" (if controlled, as it generally is, by being used in association with the word "parent") would convey.

VII.

WILL *of* RETIRED GENTLEMAN. APPOINTMENT *of* WIFE, *during* WIDOWHOOD, *and* TWO OTHERS EXECUTORS *and* TRUSTEES. WIFE *to be* SOLE GUARDIAN *of* INFANT SON, *during* WIDOWHOOD, *and on her decease or marriage, the two other* TRUSTEES *to be* GUARDIANS. LEGACIES *to* EXECUTORS. BEQUEST *of* LEASEHOLD DWELLING-HOUSE, FIXTURES *and* FURNITURE *to* WIFE *absolutely*. VII.

VII. BEQUEST *of other* LEASEHOLD PREMISES, REALTY, *and* RESIDUE *of* PERSONALTY *to* WIFE *and two other* TRUSTEES. IN TRUST *to sell* REALTY, *and with discretionary power to convert* PERSONALTY, *except the* LEASEHOLDS, *which are to remain unsold for* TWENTY-ONE YEARS, *or during* WIDOWHOOD *of* WIFE, *and the* RENTS *to be accumulated.* TO INVEST, *and* HOLD *the* FUND, *during* WIDOWHOOD *of* WIFE. IN TRUST *for* WIFE *and* CHILDREN *or their* ISSUE, *in certain proportions. After* DEATH *or* MARRIAGE *of* WIFE, *the* FUND *to be* IN TRUST *for* TESTATOR'S THREE CHILDREN, DAUGHTER'S SHARE *being* HELD *in* SETTLEMENT. PROVISO, *in case of death of* INFANT SON *under* TWENTY-ONE. DAUGHTER'S INTERESTS *to be for her separate use.* POWER *to* SELL LEASEHOLDS *before expiration of the* TWENTY-ONE YEARS, *if required for* PUBLIC WORKS. *Usual clauses.*

Revocation clause.

I, A. B., of &c., Gentleman, do hereby revoke all testamentary dispositions previously made by me, and declare this to be my last will and testament. I

Appointment of executors and guardians.

APPOINT my wife E. B., during her widowhood, and my friends F. G., of, &c., and H. I., of, &c., to be executrix and executors and trustees of this my will. AND I also appoint my said wife, during her widowhood, and after her death or marriage, the said F. G. and H. I., to be guardian and guardians of

Legacies to executors.

my son H. B., during his minority. AND I BEQUEATH to each of them, the said F. G. and H. I., as such

Legacy to wife.

executors, the sum of £——. I ALSO BEQUEATH to my said wife the sum of £——, to be paid to her within one month after my decease, for her immediate

requirements. AND I ALSO BEQUEATH to my said wife my leasehold dwelling-house and premises, number 51, A. Street, in the town of ——, with the appurtenances, TO HOLD the same for the remainder of the term of ninety-nine years now existing thereon, or other my estate and interest in the same dwelling-house and premises, UNTO my said wife, her executors, administrators and assigns, for her and their own use and benefit: AND I also bequeath to my said wife, for her absolute use and benefit, all tenants' fixtures in and about my said dwelling-house, and all my household furniture, plate, linen, china, ornaments, books, pictures, wearing apparel, wines, spirits, and consumable stores, and other household effects. I DEVISE AND BEQUEATH my leasehold houses, numbers 19 and 23, B. Street, in the town of —— aforesaid, for all the terms and interests which I shall have therein respectively at my decease, AND all the residue of my estate and effects, whether real or personal, UNTO my said wife and the said F. G. and H. I., their heirs and executors or administrators, UPON TRUST to sell my real estate [together or in parcels, by public auction or private contract, with power to make any special conditions as to title, or evidence of title, or otherwise, and with power to buy in the premises at any public sale, or to rescind, either on terms or gratuitously, any contract, and to resell, without being answerable for any consequent loss] AND to convey the premises sold to the purchaser or purchasers thereof; AND upon further trust, at the absolute discretion of the trustees or trustee for the time being of my will, hereinafter referred to as "my trustees," either to suffer such

VII.

Bequest to wife of leasehold dwelling-house, fixtures, furniture, and household effects.

Devise and bequest of other leasehold houses, realty, and residue of personalty to trustees.

Upon trust to sell real estate, and with discretionary power to convert personal estate, except leaseholds (the income of which is to be accumulated for twenty-one years, during

VII. parts of my residuary personal estate as shall not consist of money to remain constituted or invested as the same shall be at my decease, or, either immediately after my decease, or at such subsequent time or times, during the widowhood of my said wife, as my trustees shall think proper, to sell and convert the same (other than the said leasehold houses in B. Street) or any part or parts thereof, into money: AND upon further trust to collect and get in all such parts of my residuary personal estate as shall consist of money, or of debts owing to me; AND upon further trust, as to the said leasehold houses in B. Street, to receive and accumulate the annual income thereof for the term of twenty-one years from my decease, if my said wife shall so long live and continue my widow; AND on the expiration of the said term of twenty-one years, or on the death or marriage of my said wife, whichever shall first happen, UPON TRUST at such time or times thereafter as my trustees shall think proper, to sell the said leasehold houses, with the same powers and discretions as are hereinbefore conferred in relation to the sale of my real estate; AND UPON TRUST to invest the net proceeds of the sale and conversion of the real and personal estate so to be sold and converted as aforesaid, and also such parts of my residuary personal estate as shall for the time being consist of money, and also the net annual income of the said leasehold houses in B. Street, as and when the same shall be received, in the names of them my trustees, in any of the public stocks or funds of Great Britain, or on mortgage of real estate in England, or in the debentures, or debenture stock,

widowhood of wife, and property afterwards sold).

And invest proceeds, and income of leaseholds.

VII.

or preference shares, or preference stock, of any railway company in England, or in the stock or shares of any water company in England, or in the purchase of any real estate in England, which said last-mentioned real estate shall be held by my trustees upon the same trust for sale, and with the same powers and discretions in relation to any sale or sales, as my real estate hereby devised to the trustees hereby appointed, and with power for my trustees to change all or any of such investments as aforesaid for any other or others of the kinds prescribed. AND I DECLARE that the real and personal estate hereinbefore devised and bequeathed to my above-named trustees upon the trusts hereby declared, or such part thereof as shall for the time being remain unsold or unconverted, and the proceeds of all or such part thereof as shall be sold or converted into money, or the investments thereof, and the net annual income of the said leasehold houses in B. Street to be accumulated as hereinbefore directed, or the investments thereof, shall constitute my trust property hereinafter referred to; but that, where the income of my trust property is hereinafter spoken of, the same shall not be deemed to include the income of the said leasehold houses in B. Street, which shall accrue due during the period for which such income is hereinbefore directed to be accumulated. AND I DECLARE that my trustees shall hold my trust property, during the widowhood of my said wife, UPON TRUST to pay and divide the income thereof in the shares and proportions, and in the manner, following, namely, Two third parts of the said income, or whenever such two third

Explanation of the term "my trust property."

Income during widowhood of wife;

Two-thirds, or £— to

VII. decease, shall being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry in equal shares if more than one: AND in case there shall not be any child of the said K. L. who shall being a son attain the age of twenty-one years, or being a daughter attain that age or marry, then IN TRUST for the person or persons who at the decease of the said K. L. would be entitled to her personal estate, in case she had died intestate and without leaving a husband, and in the like shares and proportions in which such persons (if more than one) would be so entitled,

Gift over of infant son's share, in case of his death under age.

PROVIDED ALWAYS that, in case the said H. B. shall die under the age of twenty-one years, his said share of my trust property shall be divided into two equal moieties, one of which moieties shall be held by my trustees upon the same trusts as the original share hereinbefore given in trust for the said K. L. and her children, and the other moiety shall belong to the said F. B. AND I DECLARE that the several interests hereby given to the said K. L. in part of the income of my trust property, and in the income of a share of my trust property, shall severally be for her separate use, free from the debts, control and engagements of her present or any future husband, and that she shall have no power, during coverture, to charge, alienate, or anticipate, the same interests, or either of them, or any part thereof respectively, and that her receipts alone for the payments thereof respectively shall be sufficient discharges to my trustees. AND I empower my trustees, during the widowhood of my said wife, to apply all or any part of the income to

Daughter's interests to be for her separate use, without power of alienation during coverture.

Maintenance clause.

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which each or any grandchild of mine shall for the time being be entitled, and after the decease or marriage of my said wife, to apply all or any part of the income of any share or portion of my trust property to which the said H. B. shall for the time being be entitled, or to which each or any child of the said K. L. shall for the time being be contingently or absolutely entitled in possession, under this my will, for or towards the maintenance and education or otherwise for the benefit of the person so entitled as aforesaid during his or her minority. AND I EMPOWER my trustees to postpone the sale of all or any part of my real estate for such time as they my trustees shall think fit: BUT I declare that such unsold real estate shall from my decease be considered as converted in equity, and be transmissible as personal estate. AND I EMPOWER my trustees to let all or any part of my real and leasehold trust property for any term not exceeding seven years, or from year to year, or for any shorter period, and to apply a portion of the rents in paying for repairs, and generally to do such acts as my trustees shall think expedient in the management thereof. AND, notwithstanding anything hereinbefore contained, I declare that, in case at any time or times during the widowhood of my said wife, and before the expiration of the said term of twenty-one years from my decease, the said leasehold houses in B. Street, or either of them, or any part thereof respectively, shall be required for the purposes of any Government, municipal or other public work or undertaking, then it shall be lawful for my trustees, during the widowhood of my said wife, and before

Power to postpone sale of realty.

Constructive conversion.

Power to let and manage real and leasehold estate.

Power to sell all or part of leasehold houses before expiration of the twenty-one years, if required for public works.

VII. the expiration of the said term, to sell and assign the same houses, or such one of them, or such part thereof respectively, as shall be required as aforesaid, for all the remainder of the term or terms of years existing therein respectively, or to concur with any other person or persons in selling or assigning the same premises. AND I DECLARE that the net proceeds of any such sale or sales as last aforesaid shall be invested by my trustees in any of the investments hereinbefore mentioned, and that the income of such investments shall thenceforth be considered, and applied, as part of the income of my trust property. I NOMINATE my said wife as the person to have the power, during her widowhood, of appointing a new trustee or new trustees of this my will, in the place of any trustee who may be dead, or who may remain out of the United Kingdom for more than twelve months, or may desire to be discharged from the trusts or powers of this my will, or refuse or be unfit to act therein or be incapable of acting therein. AND I DECLARE that, in case of the second marriage of my said wife, my trust property shall thereupon vest in my trustees other than my said wife, upon the then subsisting trusts of my will. IN WITNESS, &c.

Proceeds to be invested, and income applied upon trusts of will.

Nomination of wife to appoint new trustees, under Conveyancing and Law of Property Act, 1881.

In case of wife's second marriage, the trust property to vest in the other trustees.

The commencement of the last precedent differs from that of the others, chiefly in combining the revocation clause, which in previous cases has been kept separate, and placed sometimes at the beginning, and sometimes at the end, of the will.

Some consider it the more logical plan to revoke any previous disposition before making a fresh one; but whichever order may be adopted, the practical effect is the same,

and it may no doubt be said in favour of the common plan of placing the revocation clause at the end, that, in order to facilitate reference for practical purposes, the material portions of the will should come first, and the formal parts afterwards.

It is not at all improbable that a client, when giving instructions for a will, may be unable to give any particulars of the term for which leasehold property is held. In such a case, a form of bequest in general terms, such as the above bequest of the houses in B. Street, may be adopted.

We may here remark that having regard to sects. 30 and 31 of the Wills Act, words of limitation can hardly be considered as strictly necessary in a devise to trustees. In fact, custom apart, there would seem to be even less justification for their use in a fiduciary, than in an absolute devise; since, in the latter case, the concluding words of the 28th section, "unless a contrary intention shall appear by the will," may suggest to a cautious draftsman the desirability of guarding by express words against a presumption, arising from some other clause or expression contained in the will, that a less estate than a fee simple is intended to be conferred. However, the words have been so universally used since, as well as before the Wills Act, and they add so little to the length of the document, that it would not be advisable to omit them.

In the above precedent, the trusts for sale, &c., of the real, and of the personal estate, are the same in effect; but the trust for sale of the real estate is expressed, in the first instance, as a peremptory trust (a discretionary power of deferring the sale being afterwards inserted) in order that there may be a constructive conversion from the death, and so in case of the death intestate of F. B., H. B., or any of the children of K. L., their shares may vest in their personal representatives—an object which a mere discretionary trust or power to convert, even though coupled with a declaration that the property shall be considered as converted from the death, would fail to effect. This plan is, in most cases, adopted with regard to the personalty, as well as the realty; but, if the bulk of the estate happens to be personalty, it may be better to let the will express *literally* (so far as the personal estate is concerned) the intention of leaving the matter of conversion to the trustees' discretion.

The houses in B. Street are supposed to be held for a short

VII. term, but to yield a large income. Hence the direction to accumulate the rent, and treat it as capital; such direction being restricted to the period of twenty-one years, in compliance with Thellusson's Act.

VIII.

VIII. WILL *of a* BACHELOR. LEGACIES *to* ACTING EXECUTORS, CHARITIES, *and* SERVANTS. BEQUEST *of* FAVOURITE DOG *to a* SERVANT, *with weekly sum for its keep.* RESIDUE *to* TRUSTEES, IN TRUST *to* SELL *and* CONVERT, *and* INVEST *in* CONSOLS. INCOME *to* TESTATOR'S SISTER *for* LIFE; *after her* DECEASE TRUSTEES *to retain one Sum of* £5000 STOCK *and* TRANSFER *another Sum of same* AMOUNT *to another set of* TRUSTEES; RESIDUE *to be* IN TRUST *for a* COUSIN *absolutely.* TRUSTS *of* SETTLED LEGACIES *for* TWO COUSINS, *and their* CHILDREN *or* NEXT *of* KIN. POWER *for* COUSINS *to appoint* LIFE INTERESTS *to* HUSBAND *and* WIFE *respectively.* USUAL CLAUSES.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of, &c. I REVOKE all testamentary dispositions previously made by me. I APPOINT my friends C. D., of, &c., and E. F., of, &c., solicitor, trustees and executors of this my will. I BEQUEATH to each of my said trustees and executors, or to such one of them as shall act in the trusts of this my will, the legacy of £—— sterling. AND I BEQUEATH the following charitable legacies, namely, To the Society for, &c., £—— sterling; to the Society for, &c., &c.

Revocation clause.

Trustees and executors.

Legacies to acting trustees.

Legacies to charities.

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AND I DIRECT that the said charitable legacies shall be paid out of such part of my personal estate as may be lawfully bequeathed for charitable purposes, and that the receipt of the treasurer or secretary of each of the said societies shall be a sufficient discharge to my executors for each of the said legacies respectively. I BEQUEATH to every servant who shall be in my service at my decease the legacy of £——, free of legacy duty. I BEQUEATH to my servant, G. H., my black Newfoundland dog called "Neptune," free of legacy duty. AND I direct the trustees or trustee for the time being of my will, so long as the said dog shall be alive and in the possession of the said G. H., to pay to him the said G. H. the weekly sum of ——, free of legacy duty, for the keep of the said dog. AND I DEVISE AND BEQUEATH all my messuages, lands, tenements, hereditaments, and real estate, whatsoever and wheresoever, and ALL my household furniture, plate, linen, china, money, and securities for money, and other my personal estate not hereinbefore specifically bequeathed, UNTO the said C. D. and E. F., their heirs, executors, administrators and assigns, according to the tenure and nature of the said estates respectively, UPON TRUST that the trustees or trustee for the time being of my will shall, as soon as conveniently may be after my decease, sell my real and leasehold estate [either together or in parcels, by public auction or by private contract, and] either at one time or at several times, [and with liberty, at any sale or sales, to make such special or other conditions relating to the title or evidence of title or otherwise as the said

Legacies to servants.

Bequest of dog, with annuity for its keep.

Devise and bequest of real and residuary personal estate to the trustees.

Upon trust to sell and convert, except Consols.

VIII. trustees or trustee shall think fit], and with liberty to buy in at any auction, and to rescind, either on terms or gratuitously, any contract, and to resell; AND shall convey and assure the premises sold to the purchaser or purchasers thereof respectively; AND shall sell and convert into money all other my personal estate, excepting such sum of Consolidated £3 per Cent. Annuities as may belong to me at my decease;

And pay debts, funeral and testamentary expenses, and legacies;

AND UPON TRUST that the said trustees or trustee shall, out of the net proceeds of the sale and conversion of my real and personal estate, pay my debts, funeral, and testamentary expenses, and the pecuniary legacies hereinbefore bequeathed, and shall invest the residue of such net proceeds in Consolidated £3 per Cent. Annuities, and not in any other security or mode of investment;

And invest residue in Consols.

AND (after providing for the said weekly payment to G. H.) shall pay the dividends of such stock as last aforesaid, and also the dividends of such sum of Consolidated £3 per Cent. Annuities as may belong to me at my decease, UNTO my sister J. B. during her life;

And pay dividends of all Consols to testator's sister for life;

AND after her decease UPON TRUST that the said trustees or trustee shall retain in their or his names or name the sum of £5000 Consolidated £3 per Cent. Annuities part of the said trust premises, and hereinafter called "the first settled legacy," AND shall transfer the further sum of £5000 Consolidated £3 per Cent. Annuities, other part of the said trust premises, and hereinafter called "the second settled legacy," into the names of any two other trustees whom they or he, the trustees or trustee for the time being of my will, shall by deed appoint;

And after her decease upon trust to retain £5,000 stock, and transfer another £5,000 stock to other trustees;

AND shall transfer the residue of the said Consolidated £3 per Cent. Annuities

residue of stock to a cousin.

VIII.

UNTO my cousin, L. M., of, &c., for his own use and benefit. AND I DECLARE that the trustees or trustee for the time being of my will shall stand possessed of the first settled legacy IN TRUST to pay the dividends thereof to my cousin N. O., the wife of M. O., of, &c., during her life, for her separate use, and so that her sole receipts shall notwithstanding coverture be sufficient discharges to the said trustees or trustee for such dividends; and so that she shall have no power during coverture to alienate or anticipate all or any part of her life interest in the said legacy; AND after her decease, THEN, as regards both the legacy and the income thereof, IN TRUST for all or such one or more of the issue of the said N. O., whether a child or children or more remote issue or both (such more remote issue being born in the lifetime of the said N. O. or within twenty-one years after her decease), and in such shares, if more than one, and with such provisions for the application of all or any part of the capital or income of the legacy or share of any or every appointee in or towards his or her maintenance, education or advancement during his or her minority, and other powers and provisions, and generally in such manner as the said N. O. shall, whether sole or covert, by will or codicil appoint; AND in default of such appointment, and subject to any partial appointment, IN TRUST for the child, or all the children if more than one, of the said N. O., who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, and if more than one, to be equally divided between them. But no child of the said N. O., to or in favour of whom an ap-

Trusts of first settled legacy;

Income to N. O., a married woman, for life, separate use, &c.

After her decease, capital and income to her issue, as she appoints.

And in default of appointment, &c., in trust for her children.

Hotchpot clause.

VIII.

pointment shall be made, shall participate in the unappointed portion of the said legacy, without bringing his or her appointed share or interest into hotchpot; BUT if there shall be no child of the said N. O., who being a son shall attain the age of twenty-one years, or being a daughter, shall attain that age or marry, then IN TRUST for such person or persons, and generally in such manner, as the said N. O. shall, whether sole or covert, by will or codicil appoint: AND in default of such appointment, and subject to any partial appointment, IN TRUST for the person or persons who, being of kin to the said N. O., at her decease, would be entitled to her personal estate under the statutes for the distribution of the estates of intestates, in case she had died unmarried and intestate; such persons, if more than one, to take in the shares prescribed by the same statutes. AND I DECLARE that the trustees into whose names the second settled legacy shall be transferred as aforesaid, and other the trustees or trustee for the time being of such last-mentioned legacy, shall stand possessed thereof, IN TRUST to pay the dividends thereof to my cousin P. Q., of, &c., during his life; AND after his decease, THEN, as regards both the legacy and the income thereof, IN TRUST for all or such one or more of the issue of the said P. Q., whether a child or children or more remote issue, or both (such more remote issue being born in the lifetime of the said P. Q. or within twenty-one years after his decease), and in such shares, if more than one, and with such provisions for the application of all or any part of the capital or income of the legacy or share of any or every

If no child attains vested interest,

To such persons as N. O. appoints;

If no appointment, &c.,

In trust for her next of kin.

Trusts of the second settled legacy.

Income to male cousin for life; after his decease, legacy and income to be in trust for his issue, as he appoints;

VIII.

appointee in or towards his or her maintenance, education, or advancement during his or her minority, and other powers and provisions, and generally in such manner, as the said P. Q. shall by any deed or deeds, or by will or codicil appoint; AND in default of such appointment, and subject to any partial appointment, IN TRUST for the child, or all the children, if more than one, of the said P. Q., who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, and if more than one to be equally divided between them; BUT no child of the said P. Q., to or in favour of whom an appointment shall be made, shall participate in the unappointed portion of the said last-mentioned legacy, without bringing his or her appointed share or interest into hotchpot; BUT if there shall be no child of the said P. Q., who, being a son, shall attain the age of twenty-one years, or being a daughter, shall attain that age or marry, then IN TRUST for such person or persons, and generally in such manner, as the said P. Q. shall by any deed or deeds or by will or codicil appoint; AND in default of such appointment, and subject to any partial appointment, IN TRUST for the person or persons (including a wife, if any) who would, under the statutes for the distribution of the estates of intestates, be entitled, at the decease of the said P. Q., to his personal estate, in case he had died intestate, such persons, if more than one, to take in the shares prescribed by the same statutes. AND I DECLARE that it shall be lawful for each or either of them the said N. O. and P. Q. to appoint to or in favour

If no appointment, &c., in trust for his children, who being sons, &c.

Hotchpot clause.

If no child, who, being a son, &c.,

To such persons as he appoints;

If no appointment, &c.,

To his wife (if any) and next of kin.

Power for N. O. and P. Q. to appoint

VIII. of her or his husband or wife the whole or any part of the yearly income of her or his aforesaid legacy for the life of such husband or wife, or for any interest determinable on or before the death of such husband or wife. AND I DECLARE that the last-mentioned power of appointment may be exercised by the said N. O. by will or codicil, and by the said P. Q. by any deed or deeds or by will or codicil. I DECLARE that it shall be lawful for the trustees or trustee in whom either of the said settled legacies shall for the time being be vested (but subject and without prejudice to the terms of any appointment by the said N. O. or the said P. Q. in pursuance of the powers hereinbefore contained), during the minority of the person, or all the persons, contingently or absolutely entitled in possession to such legacy, to apply the whole or any part of the annual income of such legacy, and in case there shall be more than one such person as last aforesaid, then during the minority of any one or more of such persons to apply the income of the share or shares in such legacy of any person or persons for the time being under the age of twenty-one years in or towards the maintenance and education, or otherwise for the benefit, of the person or persons contingently or absolutely entitled to the said legacy, or a share or shares therein, and who for the time being shall be under the age of twenty-one years, and, if more than one, in such shares and proportions as the said trustees or trustee shall think fit, and in case of a female, notwithstanding the absolute vesting of her legacy or share by her marriage; and the unapplied income of the whole legacy, so long

life interest to husband or wife.

Maintenance of minors.

VIII.

as the person or all the persons interested therein shall be under the age of twenty-one years, and thereafter the unapplied income of the contingent or vested share or shares in such legacy of any person or persons who for the time being shall be under the age of twenty-one years, shall be accumulated, and the accumulations thereof shall be liable to be applied in like manner, and, subject to such liability, shall be deemed part of the legacy, or of the portion thereof, for the time being belonging contingently or absolutely to a minor or minors as the case may be: AND in case more persons than one shall be interested, the same accumulations shall be divisible in the same shares as the legacy, or such portion thereof as last aforesaid, as and when the persons interested therein shall severally attain the age of twenty-one years. AND I ALSO DECLARE that it shall be lawful for such trustees or trustee as last aforesaid to apply any part, not exceeding one third, of the capital of the legacy or share to which each or any minor shall for the time being be contingently or absolutely entitled, whether in possession or in remainder, under the trusts hereinbefore contained, in or towards his or her advancement in the world; but so that, if such minor be entitled in remainder, such application shall not be made without the consent in writing of the previous taker, who, if a female, shall be competent to consent notwithstanding coverture, and as regards the said N. O., notwithstanding the prohibition of alienation during coverture hereinbefore contained. AND I DECLARE that the said E. F., or any other solicitor who may become a

Advancement.

Solicitor trustee

VIII. trustee of my will, or of the second settled legacy, may act as solicitor in such trusteeship, and may charge for all professional and other business done by him in relation to such trusteeship in the same manner as if he had not been a trustee. PROVIDED ALWAYS, and I hereby declare, that if the trustees hereby appointed, or either of them, shall die in my lifetime, or if they, or either of them, or any trustee or trustees to be appointed as hereinbefore or hereinafter provided, shall, after my death, die, or be abroad, or desire to be discharged from, or refuse or become incapable of acting in the trusts of my will, then and so often as the same shall happen, it shall be lawful for the surviving or continuing trustees or trustee of the class in which any such vacancy or disqualification shall occur (and for this purpose every refusing or retiring trustee shall, if willing to act in the execution of this power, be considered a continuing trustee), or for the acting executors or executor, administrators or administrator of such last surviving or continuing trustee, to appoint a new trustee or new trustees in the place of the trustee or trustees so dying or being abroad or desiring to be discharged or refusing or becoming incapable to act as aforesaid; AND upon any such appointment as aforesaid, the number of trustees may be increased; AND upon any such appointment, the stock then vested in the trustees or trustee of the class in which such vacancy or disqualification shall have occurred, or in the executors or administrators of the last survivor of such trustees, shall be transferred into the name or names of the new trustee or trustees of the same class, either jointly with

may charge.

Power to appoint new trustees.

the surviving or continuing trustee or trustees of the same class, or solely, as the case may require: AND every trustee so appointed as aforesaid may, as well before as after such transfer as aforesaid, act for all intents and purposes in the execution of the trusts and powers in respect of which he shall be so appointed trustee. IN WITNESS, &c.

In this precedent it will be noticed that only one method of investment is prescribed for the trust funds, viz., £3 per cent. Consols; a not unfrequent direction in these days, when, owing to the apprehension of coming changes in the land laws, and other circumstances, the desirability of mortgages as an investment is much diminished. It will also be seen that the two settled legacies are to be vested in two separate sets of trustees; the object being, not merely to divide the responsibility of the two trusts, but also to prevent the two funds becoming mixed, a thing which otherwise it might be difficult to avoid; for if the same trustees were to purchase two different sums of consols, the authorities at the Bank of England would probably refuse to keep two separate accounts for the same holders, and would consolidate the two accounts into one. This inconvenience is sometimes met, in similar cases, by having an additional trustee for one of the trusts, which secures the accounts being kept separate during his lifetime; but, as there is still the risk, in the event of his death, of the accounts being merged before there is time to appoint a fresh trustee, it is obviously safer for the two trusts to be vested in entirely different persons.

As regards the charitable bequests: it may be noted that some of the published forms, in addition to the direction that charitable legacies shall be paid out of such part of the personal estate as may be lawfully bequeathed for such purposes, go on to say "and in preference to any other payment thereout,"—these words having reference to the rule that the Court will not marshall assets in favour of a charity, and hence, in a case where the form above adopted had been used, if the pure personalty, after bearing its proportionate part of the debts, funeral and testamentary expenses, were insufficient

VIII. to also bear its proportion of the other legacies, and to pay the whole of the charitable legacies, these last would have to abate to the extent of the deficiency. Notwithstanding this, however, it would seem that the additional words in question could only do any good in a case where the pure personalty is only about enough to pay the charitable legacies, while the mixed personalty is sufficient to meet all other demands against the general personal estate; for if, on the other hand, the bulk of the personal estate should be pure personalty, and there should not be enough to pay all the legacies in full, then the effect of the added words would obviously be to give the charitable bequests priority over the other legacies, which would be very unlikely to agree with the testator's intention.

Regard should therefore be had to the special circumstances of the estate in each case; but, as a general rule, we should decidedly prefer to omit the words in question.

It will often be found that a testator is not content with merely general words of devise and bequest, such as "I devise and bequeath all my real and personal estate," &c., but wishes, to have certain things expressly referred to—either the usual principal items of property, as in this precedent, or certain things, such as railway stocks, life assurance policies, &c., which happen to be important items in the estate to be dealt with.

In the latter case, and indeed in any instance where particular words are used, care must be taken that they do not have the effect of limiting the meaning of the general words which precede or follow them. This danger is the more easily avoided if the singular or particular terms are put first, and the general term afterwards, as in this precedent; so long as the general term used is one which must be clearly taken to carry the whole residue, which would not always be the case with such a word as "goods" or "effects," which, under certain circumstances, might be construed to include only property of the same class as the things enumerated. If, however, the general term were placed first, and particulars mentioned afterwards, there would be considerable danger of the general term being narrowed to the extent of excluding other particulars of the same class, on the ground that, if all particulars of the same class as those mentioned were intended to be included in the general term, then the mention of the given particulars would have been useless and superfluous.

VIII.

In referring to the trustees throughout a will, there are various ways of getting rid of the old prolix form, "the said C. D. and E. F., or the survivor of them, his executors or administrators," which, when repeated a score or so of times, would have considerable effect in lengthening the document. In Messrs. Hayes and Jarman's work, the plan adopted is to refer to the trustees throughout the will as "my trustees" or "my trustees or trustee," and by a separate clause at the end explain these words to mean the trustees or trustee for the time being of the will. Such an explanatory clause may be still more conveniently inserted at the commencement of the declaration of trusts, thus: "Upon trust that the said C. D. and E. F. or other the trustees or trustee for the time being of my will, all of whom are hereinafter referred to as 'my trustees,' shall," &c. The expression "my trustees" seems preferable to "my trustees or trustee," as having the advantage of brevity; and there would appear to be no objection to using the plural number to indicate both singular and plural, as in ordinary speech, so long as the intention is made clear for purposes of legal construction by the definition clause.

Another plan is the one adopted in the above precedent, viz., to give the trustees, when first referred to, their full description, as "the trustees or trustee for the time being of my will," or as the case may be, and designate them afterwards by such shorter term, *e.g.*, "the said trustees or trustee for the time being," or "the said trustees or trustee," as shall clearly refer to the class of persons first indicated.

It will be observed that the powers of appointment given to N. O. and P. Q. are so guarded, that any appointee must necessarily be born within the limit of time allowed for the creation of executory interests. This is a useful precaution, since, in preparing an appointment, the practitioner would be sure to refer to the power, and take care that the appointment did not exceed its provisions; whilst it is not so certain that he would bear in mind the law which limits the creation of executory interests; and the rule that, in the case of an appointment under a special power, the power and the appointment must for this purpose be read as one document, so that if the effect of the two taken together were to exceed the limit, the appointment would be bad.

As regards the final trust for the next of kin of N. O., it

VIII. should be remembered that the words "in case she had died unmarried," used in the precedent, as well as in most of the established forms, would have the effect of excluding any grandchildren whose parents did not take vested interests under the preceding trusts, *i.e.*, children of males who have married and died under twenty-one. If it is wished to guard against this somewhat remote contingency, the words "a widow" may be substituted for "unmarried."

The maintenance clause in the precedent differs from the one in general use, and from the provisions of the Conveyancing and Law of Property Act, 1881, s. 43, in that it directs the income of the contingent or vested shares of infants in either of the settled legacies to be carried to one common account, instead of following the destination of the respective shares from which it arises; that is to say, the trustees would apply all or such part as they might think proper of the whole income of the legacy, or of the whole income of the shares of legatees for the time being under age, for the benefit of all the legatees or all the infant legatees, as the case might be, in such proportions as the trustees might think fit; and accumulate the residue as part of the general fund; and when and as the legatees severally come of age, they would receive, with their shares of the capital, corresponding shares of the income remaining unapplied at the dates of their coming of age respectively.

By this plan, which is sometimes adopted in practice, the necessity for keeping a separate account for each infant is obviated, and a great deal of trouble saved.

The clause in the power of appointment of new trustees which authorizes an increase in the number, though now only useful as a matter of information, was more important before the passing of the Conveyancing and Law of Property Act, 1881, owing to the somewhat conflicting nature of the decisions as to the propriety of an increase or diminution of the number of trustees on a fresh appointment. Doubts upon this point, however, would seem to be set at rest by subsections 2 and 3 of section 31 of the Act just referred to, which we subjoin.

"(2). On an appointment of a new trustee, the number of trustees may be increased.

"(3). On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only

one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust, unless there will be at least two trustees to perform the trust." VIII.

IX.

IX.

WILL *of* SINGLE LADY. BEQUEST *of household furniture. Pecuniary legacies.* DEVISE *of real estate to* TRUSTEES *in trust for sale.* BEQUEST *of personal estate to same trustees with discretion to retain present investments, or convert and invest in any of specified securities.* INCOME *to Brother for life.* CAPITAL, *after his death, to go to children of deceased* SISTER.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of, &c. I REVOKE all former wills made by me. I BEQUEATH all the household furniture, plate, linen, china, wearing apparel, and other household effects, which shall be in the dwelling-house occupied by me at —— aforesaid at my decease, UNTO C. D., of, &c. I BEQUEATH the pecuniary legacies following, namely, To my sister, E. F., £——, for her separate use, and for which legacy I direct that her sole receipt shall be a sufficient discharge to my executors; To, &c., &c., AND to each of my executors hereinafter named, £——: ALL which said legacies I direct to be paid free of legacy duty. I DEVISE all my real estate (other than real estate vested in me as trustee or mortgagee) UNTO G. H., of, &c., and

Revocation clause.

Bequest of household furniture, &c.

Legacies free of duty.

Devise of real estate to trustees, in trust to sell,

VIII. should be remembered that the words "in case she had died unmarried," used in the precedent, as well as in most of the established forms, would have the effect of excluding any grandchildren whose parents did not take vested interests under the preceding trusts, *i.e.*, children of males who have married and died under twenty-one. If it is wished to guard against this somewhat remote contingency, the words "a widow" may be substituted for "unmarried."

The maintenance clause in the precedent differs from the one in general use, and from the provisions of the Conveyancing and Law of Property Act, 1881, s. 43, in that it directs the income of the contingent or vested shares of infants in either of the settled legacies to be carried to one common account, instead of following the destination of the respective shares from which it arises; that is to say, the trustees would apply all or such part as they might think proper of the whole income of the legacy, or of the whole income of the shares of legatees for the time being under age, for the benefit of all the legatees or all the infant legatees, as the case might be, in such proportions as the trustees might think fit; and accumulate the residue as part of the general fund; and when and as the legatees severally come of age, they would receive, with their shares of the capital, corresponding shares of the income remaining unapplied at the dates of their coming of age respectively.

By this plan, which is sometimes adopted in practice, the necessity for keeping a separate account for each infant is obviated, and a great deal of trouble saved.

The clause in the power of appointment of new trustees which authorizes an increase in the number, though now only useful as a matter of information, was more important before the passing of the Conveyancing and Law of Property Act, 1881, owing to the somewhat conflicting nature of the decisions as to the propriety of an increase or diminution of the number of trustees on a fresh appointment. Doubts upon this point, however, would seem to be set at rest by subsections 2 and 3 of section 31 of the Act just referred to, which we subjoin.

"(2). On an appointment of a new trustee, the number of trustees may be increased.

"(3). On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only

one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust, unless there will be at least two trustees to perform the trust." VIII.

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IX.

WILL *of* SINGLE LADY. BEQUEST *of household furniture. Pecuniary legacies.* DEVISE *of real estate to* TRUSTEES *in trust for sale.* BEQUEST *of personal estate to same trustees with discretion to retain present investments, or convert and invest in any of specified securities.* INCOME *to Brother for life.* CAPITAL, *after his death, to go to children of deceased* SISTER.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of, &c. I REVOKE all former wills made by me. I BEQUEATH all the household furniture, plate, linen, china, wearing apparel, and other household effects, which shall be in the dwelling-house occupied by me at —— aforesaid at my decease, UNTO C. D., of, &c. I BEQUEATH the pecuniary legacies following, namely, To my sister, E. F., £——, for her separate use, and for which legacy I direct that her sole receipt shall be a sufficient discharge to my executors; To, &c., &c., AND to each of my executors hereinafter named, £——: ALL which said legacies I direct to be paid free of legacy duty. I DEVISE all my real estate (other than real estate vested in me as trustee or mortgagee) UNTO G. H., of, &c., and

Revocation clause.

Bequest of household furniture, &c.

Legacies free of duty.

Devise of real estate to trustees, in trust to sell,

IX. I. K. of, &c., and their heirs, UPON TRUST to sell the same [either together or in parcels, and either by public auction or by private contract, and subject to any special or other conditions of sale, and generally] in such manner as the trustees or trustee for the time being of my will shall think fit; AND UPON FURTHER TRUST to invest the net moneys to arise from such sale or sales, in the names or name of the said trustees or trustee, in any of the public funds, or Government securities of the United Kingdom, or the stock or bonds of any of the English colonies, or of any foreign Government, or on real securities in England or Wales, or stock of the Bank of England, or the bonds, debentures, debenture stock, or other stock or shares, of any railway company in England, with liberty for the said trustees or trustee, at their or his discretion, to change all or any of such investments from time to time for any other investment or investments of the description aforesaid. AND I BEQUEATH all my personal estate not hereinbefore bequeathed UNTO the said G. H. and I. K., their executors and administrators, UPON TRUST by sale and conversion of a sufficient part of the said personal estate to raise and pay my debts, funeral and testamentary expenses, and the pecuniary legacies hereby bequeathed; and, as regards the residue of the said personal estate, UPON TRUST either to permit the same to remain invested in the manner in which it shall be invested at my death, or at the discretion of the trustees or trustee for the time being of my will, either immediately after my decease or at any time or times during the continuance of the trusts hereby declared,

And invest proceeds.

Bequest of general personal estate to the trustees,

Upon trust to pay debts, funeral expenses, and legacies;

And to allow residue to remain, or convert, at their discretion,

IX.

to sell and convert into money the said residue of my personal estate, or any part thereof, AND to invest the net moneys to arise from such sale and conversion, in the names or name of the said trustees or trustee for the time being, in all or any of the investments hereinbefore prescribed for the investment of the net moneys to arise from the sale of my real estate, with the like liberty for subsequent change of investments. AND I DECLARE that the trustees or trustee for the time being of my will shall stand possessed of such parts of my personal estate as shall for the time being remain unconverted, and also the said net moneys to arise from the sale and conversion of my real and personal estate, and the stocks, funds and securities wherein the same shall for the time being be invested, UPON TRUST to pay the annual income thereof UNTO, or permit the same to be received by, my brother L. B., during his life; AND after his death I declare that the said trustees or trustee for the time being shall stand possessed of the said personal estate, moneys, stocks, funds and securities, IN TRUST for N. F., P. F., and R. F., the children of my late sister M. F., deceased, equally as tenants in common, the shares of the said P. F. and R. F. [females] to be for their separate use respectively, and their receipts, notwithstanding coverture, to be effectual discharges to the said trustees or trustee for the same shares respectively. I DECLARE that the said trustees or trustee may, in their or his discretion, postpone for such time as they or he shall think fit the sale of all or any part of my real estate, but that such real estate for the time being remaining unsold shall be

And invest.

Trustees to hold unconverted personalty, and proceeds of realty and converted personalty and investments.

Upon trust for testatrix's brother for life;

After his death in trust for a nephew and two nieces.

Power to postpone sale of real estate.

IX. subject to the trusts hereinbefore declared concerning the residue of my personal estate, and the proceeds of sale and conversion of my real and residuary personal estate and the investments thereof; and that the income of such unsold real estate shall be applicable in the same manner as the income of the said investments, and that such unsold real estate shall be deemed to be converted from the time of my death, and be transmissible accordingly. AND I APPOINT the said G. H. and I. K. trustees and executors of this my will. IN WITNESS, &c.

Appointment of trustees and executors.

Referring to the legacies to the executors, as given above, it may be remarked that they will be entitled only on condition of their proving the will, with a *bonâ fide* intention of acting in the executorship: and this would still be so if the legacies were given to them by name, instead of by their designation of executors, unless there were something to indicate a contrary intention; as for instance, if the legatee were referred to as the testatrix's brother, cousin, or other relative; or if the legacy were given "as a token of respect," or were bequeathed to one of the persons appointed executors exclusively, in addition to a previous legacy to all such persons. (*Calvert* v. *Sebbon*, 4 Beav. 222; *Burgess* v. *Burgess*, 1 Coll. 367; *Cockerill* v. *Barber*, 2 Russ. 585; *Dix* v. *Reed*, 1 Sim. & Stu. 237).

The choice of investments allowed in this case is unusually large, and should only be given under special circumstances, and where perfect confidence can be placed in the trustees' discretion.

The words "as tenants in common," in the final trust for N. F., &c., are not strictly necessary; as the word "equally" is sufficient of itself to constitute an ownership in common (See Jarman on Wills, 3rd edition, vol. ii., p. 238); but words unnecessary in principle are sometimes serviceable in preventing useless discussion, and thereby saving time.

In this precedent, nothing whatever is said as to the appointment of new trustees; thus leaving the matter entirely to the operation of the Conveyancing and Law of Property Act,

1881, ss. 31–34, a re-enactment and extension of the provisions of 23 & 24 Vic. c. 145, s. 27, which have generally been found sufficient under ordinary circumstances; besides which, in such a case as the above, where the objects are all *in esse*, the trusts would probably not be of long duration, and thus the chance of a vacancy in the trusteeship would be more remote than in the case of a will providing for a future generation. IX.

X.

X.

WILL *of a* WIDOW. DIRECTIONS *as to* FUNERAL. DEVISE *of a* MESSUAGE *and* LANDS *to* TRUSTEES; IN TRUST *to* SELL, TO PAY *certain* LEGACIES *out of* PROCEEDS, *and set apart and* INVEST *a* TRUST FUND *of* £10,000; *the same to be* HELD IN TRUST *for a* SON *for* LIFE (*inalienable trust*) *with* REMAINDER *to his* CHILDREN. *If no* CHILDREN *acquire* VESTED INTERESTS, *the* £10,000 *to sink into the* RESIDUARY PERSONAL ESTATE. *The remaining* PROCEEDS *of* SALE *to form part of the* RESIDUARY PERSONAL ESTATE. DEVISE *and* BEQUEST *of* RESIDUARY REALTY *and* PERSONALTY *to another* SON *absolutely*. POWER *for* TRUSTEES *to defer* SALE *of the* MESSUAGE *and* LANDS *until after expiration of any* LEASE, *&c. Usual clauses.*

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of, &c. I DIRECT that my funeral shall be conducted in a quiet and inexpensive manner. Funeral.

I APPOINT C. D., of, &c., and E. F., of, &c., trustees and executors of this my will. Trustees, and executors.

AND I DEVISE my messuage, lands and hereditaments called ——, situate near ——, in the county of ——, UNTO and to the use of the said C. D. Devise of a messuage and lands.

X.

Upon trust to sell;

and E. F. their heirs and assigns, UPON TRUST to sell the same, together or in parcels, and either by public auction or by private contract, and to execute such assurances and do such acts as may be necessary or desirable for carrying such sale or sales into effect; AND, out of the net proceeds of sale of the said messuage, lands, and hereditaments, to pay the following legacies, namely, To my cousin G. H., of, &c., £—— sterling, To I. K., of, &c., £—— sterling, To, &c., &c., AND to each of them the said C. D. and E. F., or to such one of them as shall act as trustee and executor of this my will, £—— sterling; AND UPON FURTHER TRUST to set apart the sum of £10,000 sterling out of the said net proceeds of sale, and to invest the same in the names or name of the trustees or trustee for the time being of my will, hereinafter referred to as "my trustees," in any of the public funds of the United Kingdom, or in stock of the Bank of England, or East India stock, or on real or leasehold securities in England or Wales, such leaseholds having not less than sixty years unexpired at the dates of the advances thereon respectively, or on the security of the bonds or debentures, or in the debenture stock, or other stock or shares, of any railway companies in England or Wales; but not in stock of the Bank of Ireland, nor on real or leasehold securities in Ireland; and with liberty, at the discretion of them my trustees, from time to time to change the investment of all or any part of the said sum so invested as aforesaid for investment in or upon any others or other of the stocks, funds, shares or securities hereby authorized, AND I DIRECT my trustees to stand possessed of the said sum of

And, out of proceeds, to pay certain legacies;

And set apart and invest £10,000.

Trusts of the £10,000.

X.

£10,000, whether consisting for the time being of cash, or of such stocks, funds, shares or securities as aforesaid, and which is hereinafter referred to as "The trust fund," UPON TRUST to pay the clear annual income thereof to my son L. B. during his life, or until he shall assign, charge, or incumber or attempt to assign, charge or incumber his interest in the trust fund or any part thereof, or become bankrupt, or institute proceedings for liquidation by arrangement or composition with his creditors, or otherwise do or permit some act or default, whether voluntary or involuntary, which, if the trust for payment to him of the said annual income were to continue, would be inconsistent with his personal enjoyment of the whole benefit of such trust, and thenceforth, at the absolute discretion of them my trustees, either to apply or not to apply the whole or any part of the said income, during the remainder of the life of the said L. B., for or towards the maintenance and support of all or any one or more of the following persons, namely, the said L. B. and his wife and children; such application, if made, to be made in such proportions and either by periodical payments or otherwise, and at such time or times as my trustees shall in their absolute discretion think fit, and generally in such manner as my trustees shall consider desirable. AND I DIRECT that, in the case last mentioned, either the whole of the said income, or such portion thereof, if any, as shall not be applied in the manner aforesaid, shall be accumulated during the life of the said L. B., and shall on his decease go and belong to his child or children living at his decease, equally if more than one, or if

To pay income to testatrix's son until he attempts to assign or becomes bankrupt, &c.;

Thenceforth, at trustees' discretion, to apply income for maintenance of son and his family.

Unapplied income to go, on son's death, to his children, or widow, or if none such, to

X.

fall into personal estate.

no child of the said L. B. shall be then living, then the whole, or the unapplied portion of the said income shall go and belong to the widow of the said L. B.; but if there shall be no child or widow of the said L. B. living at his decease, then the whole or the unapplied portion of the said income shall fall into and become part of my personal estate: AND after the death of the said L. B., I DIRECT my trustees to stand possessed of the trust fund, UPON TRUST for such child or children of the said L. B. as, either before or after his decease, shall, being a male or males, attain the age of twenty-one years, or being a female or females, attain that age or marry, and if more than one in equal shares; BUT if there shall be no child of the said L. B. who shall become absolutely entitled under the last preceding trust, THEN I DIRECT that the trust fund shall fall into and become part of my general personal estate. I EMPOWER my trustees, after the decease of the said L. B., to apply all or any part of the income of the fund or share to which each or any infant child of the said L. B. shall for the time being be contingently or absolutely entitled, in or towards his or her maintenance and education, or otherwise for his or her benefit, or to pay the same to the guardians or guardian of such child to be so applied by them or him, and without any necessity on the part of my trustees to see to the application thereof. AND after payment of the five legacies firstly hereinbefore directed to be paid, and the setting apart of the trust fund, I DIRECT that the residue of the net proceeds of sale of the said messuage, lands and hereditaments shall form part of my general personal estate. AND I DEVISE AND

On the son's death, the fund to be upon trust for his children, who being males attain twenty-one, &c.

If no such children,

The fund to fall into general personalty.

Maintenance of son's infant children.

Residue of proceeds of sale of the messuage and lands to form part of personal estate.

X.

BEQUEATH all my real estate not hereinbefore devised, and all the residue of my personal estate, after payment out of such personal estate of my debts, funeral and testamentary expenses, UNTO my son N. B. absolutely. I EMPOWER my trustees, in case they shall think fit so to do, to defer the sale of the said messuage, lands and hereditaments called —— until after the expiration of any lease or tenancy for years which may be existing therein at my decease. AND, in such case as last aforesaid, I direct that the said five first-mentioned pecuniary legacies, and the trust fund shall not be payable and required to be invested respectively until after the expiration of six calendar months from the completion of the sale of the said messuage, lands and hereditaments, or from the completion of the sale of the part thereof last sold; and that from the expiration of one year from my decease until the said legacies and trust fund shall have been actually paid and invested respectively, the same shall severally carry interest at the rate of £3 per cent. per annum only; such interest, in the case of the said legacies, to be payable half yearly to the legatees respectively, or their respective representatives, and in the case of the trust fund, to be subject to the same trusts as are hereinbefore declared concerning the income of the fund when invested. AND I DIRECT that such interest as last aforesaid shall be paid out of the rents and profits of the said messuage, lands and hereditaments, and that after payment of such interest, and after defraying the cost of all needful repairs and improvements, the residue of the said rents and profits shall become part of my personal estate. I

Residue to another son.

Power to defer sale of the messuage, &c.

In such case, payment of legacies to be deferred, and legatees to receive, out of rents, interest at £3 per cent.

Residue of rents and profits, until sale, to fall into personal estate

X.

Trustees' indemnity clause.

DECLARE that my trustees may, in their discretion, lend any moneys, portion of the trust fund, on mortgage security with less than a marketable title; and that, in case of their lending any such moneys upon leasehold security, it shall not be necessary for them to investigate the lessor's title, and that my trustees shall not be liable for any loss occasioned by such lending or omission to investigate title as aforesaid. I DIRECT that any solicitor, who may be an executor or trustee of this my will, shall be entitled to charge for all business done by him as solicitor to my executors or trustees, or otherwise in relation to my estate. AND I REVOKE all testamentary dispositions made by me before this present will. IN WITNESS, &c.

A solicitor, being executor or trustee, may charge for professional work.

Revocation clause.

Here, the personal estate is supposed to be insignificant, and therefore the fund for payment of the legacies is provided for by a direction to sell certain real estate.

As regards inalienable trusts, such as the one found in this precedent, it is well settled that any interest really vested in the *cestui que trust* must necessarily be alienable: and no expressions to the contrary, nor directions that the income shall be applied for his maintenance or for his personal benefit, &c., will take away from it this quality, nor (in case of bankruptcy) prevent its vesting in the bankruptcy trustee. At the same time, there is nothing to prevent a limited interest, such as the above, being made *terminable* on alienation or bankruptcy, &c.; and the only way of continuing wholly or partially to the person concerned the benefit of the fund, after such an event, is to give the trustee, after alienation or bankruptcy, &c., a discretionary power to apply the income for the benefit of the party, or for the benefit of himself and family, or to withhold it; and as an additional precaution, any income not so applied had better be given over.

The limiting of the interest to £3 per cent., in case of the sale being deferred, is in consequence of its being payable out

of the rents and profits of land, which would not suffice, in most cases, to pay the £4 per cent. to which a legatee is ordinarily entitled.

The ordinary trustees' indemnity and reimbursement clause is not of any real use, both because it gives no further protection than would be afforded by the ordinary doctrine of Courts of Equity, and because, even if it be assumed to confer some advantage, the Statute 22 & 23 Vic. c. 35, s. 31, which enacts that it shall be deemed to be contained in every deed, will, or other instrument creating a trust, renders its actual insertion superfluous. But the above indemnity from the consequences of accepting a security with less than a marketable title, or omitting to investigate the lessor's title on taking a mortgage of leaseholds, may be adopted with advantage in cases where money is likely to be lent on mortgage to any large extent. Sometimes words are also inserted indemnifying a trustee from the consequences of permitting certain acts, such as the investment of money, &c., to be done by his co-trustee alone; but we venture to think that this is carrying consideration for the trustees too far, inasmuch as it amounts to sacrificing in some degree one of the principal objects for which more trustees than one are appointed, viz.: that the responsibility and consequent watchfulness of each individual trustee may be a safeguard against dishonesty or carelessness on the part of the other or others.

XI.

XI. WILL *of a* MARRIED WOMAN *in exercise of* POWERS. APPOINTMENT *of* PERSONALTY *settled on* TESTATRIX'S MARRIAGE (*in default of* CHILDREN) *in favour of two* COUSINS *of* TESTATRIX, *subject to* HUSBAND'S LIFE INTEREST *under the* SETTLEMENT. APPOINTMENT *of certain* REAL ESTATE *in favour of* HUSBAND *for* LIFE, *with* REMAINDER, *in default of* CHILDREN, *to the two* COUSINS *in* FEE.

THIS IS THE LAST WILL AND TESTAMENT of me A. B., the wife of C. B., of, &c.

Recital of marriage settlement;

WHEREAS by an Indenture dated the —— day of ——, and made between the said C. B. of the first part, me the said A. B., by my then name and description of A. Y., spinster, of the second part, and E. F. and G. H. of the third part, being the settlement made upon my marriage with the said C. B., IT WAS AGREED AND DECLARED that the said E. F. and G. H. and the survivor of them, his executors or administrators, and other the trustees or trustee for the time being of the said indenture of settlement, should stand possessed of the sum of £3,000 Consolidated £3 per cent. Annuities, the sum of £2,500 £4 per cent. Debenture Stock of the —— Railway Company, and the sum of £4,000 sterling secured by mortgage of a messuage and lands at —— in the county of ——, and of the stocks, funds or securities into or for which the same should be converted or transposed, UPON SUCH

TRUSTS as in the said Indenture are mentioned during the joint lives of me and the said C. B. and the life of the survivor of us, AND after the decease of such survivor, UPON CERTAIN TRUSTS and subject to certain powers therein declared and contained, for the benefit of the children and other issue of the said marriage, or some or one of them; BUT in case there should be no child of the said marriage, who being a son should attain the age of twenty-one years, or being a daughter should attain that age or marry, then it was declared that, subject to the trusts thereinbefore contained, the said trustees or trustee for the time being should stand possessed of the said stocks, funds, and securities, or so much thereof as should not have become vested or been applied under any of the trusts or powers therein contained, UPON the following trusts, namely; IN CASE I should survive the said C. B., IN TRUST for me, my executors, administrators, and assigns; BUT in case the said C. B. should survive me, IN TRUST for such person or persons and generally in such manner as I should notwithstanding coverture by will appoint. AND WHEREAS my uncle I. K., late of ——, deceased, by his last will, dated the —— day of ——, and proved at —— on the —— day of ——, devised all that messuage and lands known as the Highfield Estate, situate in the parish of —— in the county of ——, TO THE USE of L. M. and N. O. during my life, UPON THE TRUST therein mentioned, AND the said testator declared that it should be lawful for me, notwithstanding coverture, by my last will to appoint to the use of the said C. B. the said messuage and lands, or any part thereof,

XI.

Recital of will of an uncle;

XI. for his life, without impeachment of waste, or for any smaller estate: AND after my decease, subject to any appointment to the use of a husband to be made by me as aforesaid, the said testator devised the said messuage and lands, TO THE USE of my child or all my children (whether by the said C. B. or by any future husband) who should be living at my decease, and the issue then living of any of my children who should have died in my lifetime, as tenants in common *per stirpes:* BUT in case there should be no such child or other issue living at my decease, then the said testator devised the said messuage and lands, TO SUCH uses as I should, whether sole or covert, by my last will appoint:

no issue of the marriage.

AND WHEREAS there has been no issue of my said marriage with the said C. B.: NOW THEREFORE in exercise of the aforesaid power of appointment contained in the hereinbefore recited indenture of settlement, and of every other power enabling me in this behalf, I APPOINT that, in case there shall be no child of the said marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, the said E. F. and G. H., and the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of the said indenture of settlement, shall from and after the decease of the said C. B. and such default or failure of children as aforesaid which shall last happen, stand possessed of the stocks, funds and securities now or hereafter to become subject to the trusts of the said indenture, or so much thereof respectively as shall not have become vested or been applied under any of the

Appointment of settlement fund, after husband's decease, in favour of two cousins.

XI.

trusts or powers in the same indenture contained, IN TRUST for my cousins P. Q. of ——, and R. S. of ——, in equal shares. AND in exercise of the first-mentioned power of appointment contained in the will of the said I. K. as hereinbefore recited, and of every other power enabling me in this behalf, I APPOINT that the said messuage and lands known as the Highfield Estate shall from and after my decease be and remain, To THE USE of the said C. B. during his life without impeachment of waste: AND in exercise of the secondly mentioned power of appointment contained in the said recited will, and of every other power enabling me in this behalf, I APPOINT that in case there shall be no child or other issue of me living at my decease, then the said messuage and lands shall, from and after the decease of the said C. B., be and remain, To THE USE of the said P. Q. and R. S. and their respective heirs and assigns, in equal shares. IN WITNESS, &c.

Appointment of real estate comprised in the uncle's will

to testatrix's husband for life, and afterwards (if no issue of testatrix), to the cousins.

The above not being a disposition of the testatrix's separate estate, but merely an exercise of powers, she has no right, properly speaking, to appoint executors, although the persons intended to act are sometimes named as executors under such circumstances, with a view to giving them a priority of claim to a limited grant of administration with the will annexed. But under such a will as the above, the trustees of the settlement would probably have no difficulty in obtaining the grant, or even if it should be made to the husband, the matter would be of no consequence, as the grant would only operate upon the appointed fund, which would still remain in the hands of the trustees until after his death.

If the will comes into effect, it will be the duty of the trustees, on the testatrix's death, to realize a sufficient portion of the fund to pay administration duty and other testamentary expenses; and, on the death of the husband, the appointees, or their representatives, will be liable to legacy duty on the

XI. settled fund, and to succession duty on the real estate. The will gives no direction as to the payment of the administration duty and other testamentary expenses, because this is not a matter within the scope of the power; the administration duty, &c., being payable on the testatrix's death, whilst the appointment can only take effect after the expiration of the husband's life interest.

If the appointment of the settled fund had been in exercise of a special power, no administration duty would have been payable, and the duty payable by P. Q. and R. S. on their becoming entitled in possession, although assessed at the same rate and on the same principle as in the other case, would be payable under the Succession Duty Act instead of the Legacy Duty Acts, and the form of account prescribed by the former Act would be used.

XII.

XII. WILL *of* MARRIED WOMAN *bequeathing unsettled* PERSONAL ESTATE, *with* LICENSE *of* HUSBAND, *to* TRUSTEES, IN TRUST *for* HUSBAND *for* LIFE, *and after his* DEATH, IN TRUST *for a* SON *of* TESTATRIX, *or if he* DIES *under* TWENTY-ONE, IN TRUST *for* HER CHILDREN *who attain that age. If no such* CHILDREN, IN TRUST *for* HUSBAND *absolutely.* MAINTENANCE *and* ADVANCEMENT *clauses.* HUSBAND *to have power of appointing new* TRUSTEES *under the Statute.*

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., the wife of C. B., of, &c.

Recital of will bequeathing certain bonds to testatrix.

WHEREAS E. F., late of ——, Gentleman, deceased, by his last will, dated the —— day of ——, and proved at —— on the —— day of ——, bequeathed thirty 5 per cent. Bonds of £100 each of the Colony

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of Victoria to me absolutely, and the said Bonds are now in the custody of Messrs. X. and Co., bankers: Now I BEQUEATH the said Bonds to G. H. of —— and I. K. of —— their executors, and administrators, UPON TRUST to sell such portion thereof as will be sufficient for the payment of my funeral and testamentary expenses which I direct my said trustees to pay and discharge, and as to the residue of the said Bonds and of the moneys thereby secured, UPON TRUST either to retain the same in their present state of investment, or at the discretion of the trustees or trustee for the time being of my will, at any time or times to sell the same, or any part thereof, and invest the net proceeds of such sale or sales in any of the public funds of the United Kingdom, or upon real securities in England or Wales, but not in Ireland, or in or upon the debentures or debenture stock, or guaranteed preference or ordinary stock or shares, of any railway company in the United Kingdom at the time of such investment paying interest or dividends upon such debentures, stock or shares respectively, and with power for the said trustees or trustee from time to time to change such investments for any others of the description aforesaid; AND UPON TRUST to pay the annual income of the residue of the said Bonds and moneys, and of the stocks, funds, shares or securities into or for which the same or any part thereof may be converted or exchanged, all of which are hereinafter referred to as "the trust fund," unto, or permit the same to be received by, my husband the said C. B., during his life; AND after his decease, I DECLARE

Bequest of the bonds to trustees,

Upon trust to pay funeral and testamentary expenses;

To retain or alter investment at discretion:

Income to husband for life,

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Capital, after husband's decease, to testatrix's son.

Limitation over, in case of son's death under twenty-one, to children who attain that age:

If no such children, the fund to be in trust for husband absolutely.

Maintenance of infants.

that the said trustees or trustee shall stand possessed of the trust fund, IN TRUST for my son L. M., his executors, administrators or assigns; BUT in case the said L. M. shall die under the age of twenty-one years, then I DECLARE that the said trustees or trustee shall stand possessed of the trust fund, IN TRUST for all my children, living at my decease, who shall then have attained or shall afterwards attain the age of twenty-one years, to be equally divided between them: BUT in case I shall leave no child living at my decease, who shall then have attained, or shall afterwards attain the age of twenty-one years, then the said trustees or trustee shall, from and after such default or failure of issue as aforesaid, stand possessed of the trust fund, IN TRUST for the said C. B., his executors, administrators and assigns absolutely. AND I DECLARE that it shall be lawful for the trustees or trustee for the time being of my will to apply the whole, or such part as they or he may think fit, of the annual income of the property to which any or every child of mine shall for the time being be presumptively or contingently entitled under this my will, whether such property shall be the whole of the bonds, stocks, funds, shares or securities for the time being subject to the trusts thereof, or only a share therein, for or towards the maintenance and education, or otherwise for the benefit of such child: AND I DIRECT that the residue of such income shall be accumulated, by investing the same, and the resulting income thereof, from time to time, in or upon any of the stocks, funds, shares or securities hereinbefore prescribed for the investment of the principal trust

Accumulation.

fund, for the benefit of the child, or other the person or persons, who under the trusts of this my will shall become entitled to the property from which the same income arose; but it shall be lawful for the said trustees or trustee to apply the accumulations of any previous year or years for the benefit of the child for the time being presumptively or contingently entitled thereto. AND I ALSO DECLARE that it shall be lawful for the said trustees or trustee, at their or his discretion, after the death of the said C. B., or during his lifetime with his consent in writing, to raise any part or parts, not together exceeding one half, of the fund or share to which any child of mine shall for the time being be presumptively or contingently entitled as aforesaid, and to apply the same for the advancement or benefit of such child. I NOMINATE the said C. B. as the person to appoint a new trustee or new trustees of this my will, in the place of any deceased, absent, retiring, refusing, unfit, or incapable trustee or trustees, under the powers in that behalf provided by the Conveyancing and Law of Property Act, 1881, and under any of the circumstances in the said Act mentioned. AND I APPOINT the said G. H. and I. K. trustees and executors of this my will. IN WITNESS, &c.

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Advancement.

As to appointment of new trustees under statute.

Appointment of trustees and executors.

I, C. B. of, &c., the husband of A. B. the above named testatrix, do hereby signify my license and assent to the above written will.

As witness my hand this —— day of ——, 18—.

Signed by the said C. B. in the presence of us. } C. B.

W. X.

Y. Z.

XII. It will be observed that this will is not made under a power, nor does it relate to separate estate; in either of which cases the consent of the husband would be unnecessary. It deals with certain unsettled personalty belonging to the testatrix.

In order to show how the testatrix claims the property as her own, we should generally recommend, in such a case, a short recital of the manner in which the property was acquired. This would be still more desirable, if the will dealt with money in the bank, articles of furniture, and miscellaneous property; in which case it would also be the duty of the solicitor carefully to consider whether the circumstances were such as to give the wife a right of bequest subject only to her husband's sanction.

In the precedent, the testamentary expenses are expressly directed to be paid out of the fund, in order to avoid any doubt in the matter, and because the husband could not be expected to pay the probate duty, &c., after having by assenting to the will, reserved to himself a mere life interest. The funeral expenses would be a matter of discretion. Debts of course there would be none in most cases.

This will would be of use only in the event of there being a child or children living at the testatrix's death, because otherwise the only operative portion of the will would be the trust in favour of the husband; but as he would be entitled to the fund in his marital capacity, without any testamentary disposition, a will in his favour alone would be entirely superfluous.

The precedent is intended to meet the case of a testatrix having one child living at the date of the will, for whom she wishes to make provision: leaving any future children, in case there should be such, to be provided for by the husband. *As a general rule*, trusts for children should be so worded as to let in future children, whom otherwise the will has the effect of disinheriting instead of providing for them. This is more important however in the case of male than of female testators, owing to the danger, in the former case, of a posthumous child being excluded, where a trust is created in favour of the children *by name*, or is otherwise confined to those who are in being at the date of the will.

The husband may, at any time before probate, revoke his consent, given in his wife's lifetime, to a will made by her.

But if after her death, although before probate, he has once assented to the will, having at the time full knowledge of his rights, his assent cannot afterwards be revoked. On and after the 1st January, 1883, a husband's consent will no longer be necessary to a bequest by the wife of English Government Stock, stock in public companies, or bank deposits, if standing in her name, and certain other kinds of property; nor to any devise or bequest whatever of property belonging absolutely to the wife, where the marriage shall have taken place, or the property been acquired, on or after the above date. (See Married Women's Property Act, 1882, ss. 1, 2, 5, 6.) XII

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WILL *devising* REAL ESTATE *in strict settlement; subject to a term of* 1,000 *years for raising money to pay debts, secure a jointure to* TESTATOR'S WIFE, *and provide younger children's portions.* BEQUEST *of furniture, &c., to* TRUSTEES, *to devolve as heirlooms.* BEQUEST *of residuary* PERSONAL ESTATE *to separate* TRUSTEES, UPON TRUST *to convert and pay debts, &c., so far as the* FUND *will extend, and to pay the residue (if any), to the principal* TRUSTEES, *to be applied in the same manner as the proceeds of real estate sold under the power of sale.* USUAL CLAUSES. XIII.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of &c. I DEVISE all my messuages, Devise of

XIII. lands, and hereditaments, being freehold of inheritance, UNTO C. D., of &c., and E. F., of &c., their heirs and assigns, TO THE USE of W. X., of &c., and Y. Z., of &c., their executors, administrators, and assigns, for the term 1,000 years, to commence from my decease, without impeachment of waste, nevertheless UPON THE TRUSTS hereinafter declared; AND after the expiration of the said term, and in the meantime subject thereto, TO THE USE that my wife G. H., and her assigns, may receive a yearly rent-charge of £—— during her life, for her jointure, and in bar of dower and freebench, to be charged upon and payable out of the said premises hereinbefore devised, and to be payable by equal half-yearly payments on the —— day of —— and the —— day of —— in every year without deduction, the first payment to be made on the first of such days next after my death; [AND TO THE USE that if the said rent charge or any part thereof shall at any time be unpaid for twenty-one days after any of the days hereinbefore appointed for payment thereof, then and so often it shall be lawful for my said wife and her assigns to enter into and distrain upon the said premises hereinbefore devised, or any part thereof, and to dispose according to law of the distresses there found, to the intent that thereby or otherwise the said rent-charge, or the part thereof so unpaid, and all expenses occasioned by the non-payment thereof, may be paid and satisfied; AND TO THE USE that if the said rent-charge or any part thereof shall at any time be unpaid for forty days next after any of the days hereby appointed for payment thereof, then and so often (although there shall not

freeholds of inheritance to the trustees of the will, to uses, viz.;

To other trustees for 1000 years.

Subject thereto, annuity to wife,

with power of distress,

and entry

XIII.

have been any legal demand made thereof), it shall be lawful for my said wife and her assigns to enter upon and hold the said premises hereinbefore devised, or any part thereof, and to take the rents and profits thereof, until she and they shall thereby or otherwise be paid and satisfied the said yearly rent-charge and the arrears thereof, due at the time of such entry, or afterwards to become due during her or their being in possession of the said premises, together with all costs and expenses occasioned by the non-payment thereof, and such possession when taken to be without impeachment of waste;] AND, so subject and charged as aforesaid, TO THE USE of my son I. K. for his life without impeachment of waste; AND after his decease, TO THE USE of the first and every other son of the said I. K. successively, according to their respective seniorities in tail male; AND, in default of such issue, TO THE USE of my son L. M. for his life without impeachment of waste; AND after his decease, TO THE USE of the first and every other son of the said L. M. successively, according to their respective seniorities in tail male; AND, in default of such issue, TO THE USE of the first and every other son of the said I. K. successively according to their respective seniorities in tail; AND, in default of such issue, TO THE USE of the first and every other son of the said L. M. successively, according to their respective seniorities in tail; AND, in default of such issue, TO THE USE of the daughter or daughters of the said I. K. in tail, and if more than one, as tenants in common, in equal shares; AND, if and so often as there shall be a failure of issue of any

To eldest son I. K. for life, and his sons in tail male,

son L. M., the same,

to I. K.'s sons, tail general,

to L. M.'s sons, tail general,

to I. K.'s daughters as tenants in common in tail

XIII. with cross remainders, daughter of the said I. K., then, as well as to the original share of such daughter, as also as to the share or shares which shall have accrued to her or to her issue under this cross limitation, TO THE USE of the others or other (if any) of the daughters of the said I. K. in tail, and if more than one, as tenants in common, in equal shares; AND, in default of such issue, then, as to the entirety of the said premises, TO THE USE of all the daughters of the said L. M. [same limitations as to the daughters of I. K.]. AND, in default of such issue, TO THE USE of my daughters N. O. and P. Q., as tenants in common for their respective lives, in equal shares, without impeachment of waste; AND, after the death of each of my said daughters, then, as to her share in the said premises, TO THE USE of the first and other sons of such daughter successively, according to their respective seniorities in tail; AND, in default of such issue, TO THE USE of the daughter or daughters of such my daughter in tail, and, if more than one, as tenants in common, in equal shares; AND, if and so often as there shall be a failure of issue of any daughter of such my daughter, then, as well as to the original share of any or every daughter of such my daughter whose issue shall fail, as also as to the share or shares which shall have accrued to her or to her issue under this cross limitation, TO THE USE of the others or other (if any) of the daughters of such my daughter in tail, and, if more than one as tenants in common, in equal shares; AND, in default of issue of either of my said daughters, then, as to the share of my daughter whose issue shall fail, TO THE SAME USES in favour of the other of my said daughters during

to L. M.'s daughters in the same manner,

to testator's daughters for life,

and their sons, tail general,

to their daughters as tenants in common in tail, with cross remainders;

Cross remainders as to the settled shares of testator's daughters;

her life, and her sons and daughters after her death, as are hereinbefore declared concerning the original share of each of my said daughters in the said premises; AND in default of such issue, then (as to the entirety of the said premises), TO THE USE of every son of mine, other than the said I. K. and L. M., now born or hereafter to be born successively according to their respective seniorities in tail male; AND in default of such issue, TO THE USE of every son of mine other than the said I. K. and L. M. now born or hereafter to be born successively, according to their respective seniorities in tail; AND in default of such issue, TO THE USE of my daughter or daughters, other than the said N. O. and P. Q., now born or hereafter to be born in tail, and if more than one as tenants in common in equal shares; AND if and so often as there shall be a failure of issue of any daughter of mine other than as aforesaid, then as well as to the original share of such my daughter, as also as to the share or shares which shall have accrued to her or to her issue under this cross limitation, TO THE USE of the others or other (if any) of my daughters other than the said N. O. and P. Q. in tail, and if more than one as tenants in common, in equal shares; AND in default of such issue, TO THE USE of my nephew, R. S., for his life, without impeachment of waste; AND after his decease, TO THE USE of the first and every other son of the said R. S. successively according to their respective seniorities in tail male; AND in default of such issue, TO THE USE of my own right heirs. PROVIDED ALWAYS that every tenant for life or in tail male or in tail in possession

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Remainders, as entirety,

To every other son of testator successively in tail male, and tail general:

To all testator's other daughters, as tenants in common in tail, with cross remainders;

To nephew for life, and his sons in tail male;

To testator's right heirs.

XIII. Name and arms clause.

of the said premises hereinbefore devised, or any share therein, under this my will, or the husband of any woman who shall be or shall afterwards become such tenant as aforesaid, unless he or she shall already use the surname and arms of B., shall, as to every such tenant for life or in tail male or in tail, within one year after he or she shall become entitled in possession, if of the age of twenty-one years, or if an infant, within one year after he or she shall attain the age of twenty-one years, and as to every such husband, within one year after his wife shall become entitled in possession or be married to him, whichever shall last happen, assume and use for all purposes the surname of B., either alone or together with his or her family surname, but in the last case so that the surname of B. may be the last and principal name, and assume and use the arms of B., either alone or quartered with his or her own family arms; AND FURTHER that in case any such tenant for life or in tail male or in tail, or the husband of any such tenant, who shall not already use the said surname and arms, shall neglect within the said one year to assume and use such surname and arms in manner aforesaid, or in case any such person, who shall for the time being use the name, shall at any time afterwards discontinue the use of such surname and arms, THEN, and in every such case, immediately after the expiration of the said one year, or immediately after such discontinuance as aforesaid, as the case may be, the estate for life, or the estate in tail male or in tail in possession of such tenant for life, or in tail male or in tail in all or any part of the said premises, under this my will,

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shall determine, and the said premises hereinbefore devised, or the share therein in which such tenant shall be so interested as aforesaid, shall devolve in the same manner as if such person being tenant for life were dead, or being tenant in tail male or in tail in possession were dead, without issue inheritable under such entail. PROVIDED ALWAYS that the determination, under the aforesaid proviso, of an estate for life hereinbefore limited to any person who or whose husband shall neglect or discontinue as aforesaid, shall not prejudice any of the contingent remainders hereinbefore limited to his or her son or sons or daughter or daughters, and that from and after such determination as aforesaid the rents and profits of the said premises shall belong to the person or persons for the time being entitled, under the limitations hereinbefore contained, to the first vested estate in remainder expectant on the decease of the person who or whose husband shall so neglect or discontinue as aforesaid. AND I DECLARE that the said premises are hereby limited to the said W. X. and Y. Z., their executors, administrators and assigns, for the said term of 1000 years, UPON TRUST that they the said W. X. and Y. Z., or the survivor of them, or the executors or administrators of such survivor, hereinafter referred to as "the trustees of the term," shall by sale or mortgage of the said premises or any part thereof, for all or any part of the said term, or out of the rents and profits of all or any part of the said premises, or by any other reasonable ways and means, raise such sum or sums of money as they or he shall think sufficient for the payment of such portion (if any) of my

Trusts of the term of 1000 years;

1. To raise a sufficient sum to supply deficiency of residuary personal estate to pay debts, &c.;

XIII. debts, funeral and testamentary expenses as the proceeds of my residuary personal estate hereinafter bequeathed in trust for sale and conversion shall be insufficient to pay; AND UPON TRUST that, in case the said yearly rent-charge of £—— or any part thereof shall at any time or times be sixty days in arrear, then the trustees of the term shall, by all or any of the ways and means aforesaid, or by any other reasonable ways and means, raise and satisfy the arrears of the said rent-charge, together with all costs and expenses occasioned by the non-payment thereof; AND UPON TRUST that, in case there shall be any child or children of mine (other than an eldest or only son, or a daughter or daughters, entitled as tenant or tenants for life or in tail to the freehold or inheritance of the said premises under the limitations hereinbefore contained) who shall being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, then the trustees of the term shall, by all or any of the ways and means aforesaid, or by any other reasonable ways and means, raise for the portion or portions of such child or children, if only one, the sum of £——, or if only two the sum of £—— to be divided equally between them, or if three or more the sum of £—— to be divided equally between them; the portion or portions of a son or sons to be raiseable and payable when and as he or they respectively shall attain the said age of twenty-one years, and the portion or portions of a daughter or daughters to be raiseable and payable when and as she or they respectively shall attain that age or marry; AND UPON TRUST that the

2. To raise rent-charge if in arrear,

3. To raise younger children's portions,

With pro

XIII.

Provisions for their maintenance,

trustees of the term shall out of the rents and profits of the said premises, or any part thereof, raise and apply, for the maintenance or education of every or any child of mine for the time being contingently entitled to a portion under the trust lastly hereinbefore contained, such yearly sum of money (not exceeding interest on such portion at £4 per cent. per annum) as they or he the trustees of the term shall think fit, PROVIDED ALWAYS that it shall be lawful for the trustees of the term, by all or any of the ways and means aforesaid, or any other reasonable ways and means, to raise any sum or sums of money, not exceeding altogether one-third of the then contingent portion of any son of mine under the trust for raising younger children's portions hereinbefore contained, and to apply the money so to be raised for the advancement or benefit of such son in such manner as they or he the trustees of the term shall think fit. PROVIDED ALWAYS that, in case of the death under the age of twenty-one years of any son or sons of mine for whose advancement or benefit any sum or sums shall have been raised and applied as provided by the last preceding clause, the sum or sums so raised and applied for the advancement or benefit of him or them respectively so dying shall not be considered as part of the amount raiseable for portions as aforesaid, unless the sum or sums so raised and applied as last aforesaid, together with all other sums raised and raiseable for and on account of portions, shall together exceed the sum of £——; in which last-mentioned case, so much of the sum raiseable for portions as shall form the excess over the said sum of £——

And for advancement of sons.

Sums raised for advancement of sons who die under twenty-one, not to be reckoned as part of amount raiseable as above, subject to a given limit.

XIII. shall sink into the estate and not be raised. AND I DECLARE that, if and so often as any tenant for life or tenant in tail male or in tail by purchase in possession of the said premises hereinbefore devised or any share therein, shall be under the age of twenty-one years, then the said C. D. and E. F. or the survivor of them or the executors or administrators of such survivor, hereinafter referred to as "the trustees of my will," shall during such minority receive the rents and profits of and manage the entirety of the said premises, with power to fell timber for repairs or sale or otherwise, and accept surrenders from and make allowances to and arrangements with tenants and others, and with all other powers expedient for the due management thereof; AND after deducting the expenses of management, repairs, insurance and other outgoings, and satisfying any and every annual sum, and the interest of any and every gross sum, which may be charged upon the said premises or any part or share thereof, shall pay and apply such portion as they or he the trustees of my will shall think proper of the income of the said premises or of the share therein of such minor, as the case may be, for or towards the maintenance or education of such minor; or shall pay the same to the guardians or guardian of such minor to be so applied, without any obligation on the part of them the trustees of my will to see to the due application thereof, or any liability on the part of the trustees of my will in case of the misapplication or non-application of such portion of income by such guardians or guardian; and shall accumulate the residue of such income as last aforesaid, in the way

Trustees of will to manage real estate during minority of tenant for life or tenant in tail by purchase in possession;

And apply part of net income, at discretion, for maintenance and education of such infant tenant for life, &c.,

And accumulate residue,

XIII.

of compound interest, by investing the same and all the resulting income thereof in the names of the trustees of my will in any of the public funds of Great Britain or upon real securities in England or Wales, with power to vary the same at their or his discretion; AND shall hold all the residue of such income and the investments thereof with the resulting income UPON THE TRUSTS following, namely: If the person during whose minority such income shall have been accumulated shall attain the age of twenty-one years, IN TRUST for such person absolutely; but if such person shall die under the age of twenty-one years, then, from and after the decease of such person, UPON THE TRUSTS hereinafter declared concerning the moneys to arise from a sale in pursuance of the power of sale hereinafter contained. BUT in case, during the infancy of any such tenant for life or in tail male or in tail as aforesaid, who shall be entitled to a share only of the said premises, there shall be any other such tenant who shall have attained the age of twenty-one years, then the trustees of my will shall during such infancy pay the net income of the share of such tenant as last aforesaid to him or her respectively. I DECLARE that it shall be lawful for every person hereby made tenant for life of the said premises hereinbefore devised or a moiety thereof, whether entitled in possession or not, by deed executed in the presence of and attested by one or more witness or witnesses, or by will (but subject to the estates preceding his or her own estate, and to the powers annexed to such preceding estates, and to all estates limited in exercise of any such powers), to appoint to or in

And hold same upon trust for the tenant for life, &c., on his attaining twenty-one, or otherwise, upon same trusts as money to arise from a sale under the powers of the will.

Power for tenants for life to limit rent-charges to wives or husbands;

XIII. favour of any person whom he or she shall have married, or shall be about to marry, for his or her life, a yearly rent-charge, not exceeding in the case of an appointment by a tenant for life of the whole of the said premises the sum of £——, and not exceeding in the case of an appointment by a tenant for life of a moiety of the said premises the sum of £——, to be charged upon all or any part of the said premises, or upon all or any part of the moiety of the said premises of which the person for the time being exercising this power is hereby made tenant for life as the case may be, and to be payable at such times as the person for the time being exercising this power shall direct, with the usual powers and remedies by distress and entry for securing the payment thereof; AND by the same deed or will (but subject as aforesaid) to appoint the real estate, or moiety of real estate, so charged to a trustee or trustees for any term of years, with or without impeachment of waste, upon such usual trusts for securing such rent-charge as the person for the time being exercising this power shall think fit. PROVIDED ALWAYS that no rent-charge to be appointed under this power shall take effect as an actual charge unless the person appointing the same shall be or afterwards become entitled, under the limitations herein contained, to the possession or the receipt of the rents and profits of the said premises, or of the moiety thereof, in relation to which such appointment shall have been made, or would if living have been so entitled: PROVIDED ALSO that if the entirety of all or any part of the said premises, would, by reason of the exercise of this power, be

But the amount of all such rent-

XIII.

charges together not to exceed a certain sum.

liable at any one time to the payment of a larger yearly sum in the whole than £——, or if a moiety of the said premises, or of any part thereof, would by reason of the exercise of this power be liable at any one time to the payment of a larger yearly sum in the whole than £——, then the rent-charge or rent-charges by which such excess would be occasioned, or such part thereof respectively as would form such excess, shall, during the continuance of such excess, sink into the premises or moiety of the premises on which the same shall be charged, and not be raiseable; and the same rent-charges shall severally have priority according to the priority, in order of limitation, of the estates of the persons charging the same respectively; AND I DECLARE that it shall be lawful for every person hereby made tenant for life of the said premises hereinbefore devised, or a moiety thereof, whether entitled in possession or not, by deed executed in the presence of and attested by one or more witness or witnesses, or by will (but subject to the estates preceding his or her own estate, and to the powers annexed to such preceding estates and to all estates limited in exercise of any such powers), to charge all or any part of the said premises hereinbefore devised, or the moiety of the said premises of which the person for the time being exercising this power is hereby made tenant for life, or any part thereof, with the payment of any sum or sums not exceeding in the different events hereinafter specified the different sums hereinafter mentioned, as the portion or portions of all or any one or more of his or her children (other than a first or only son or a daughter or daughters entitled under the limita-

Power for tenants for life to charge portions:

XIII. tions herein contained to the said premises or such moiety thereof as last aforesaid for the first estate in tail male or in tail), that is to say; FIRSTLY, in case of such person having been hereby made tenant for life of the entirety of the said premises; if there shall be only one such child (other than as aforesaid) the sum of £——, if only two, the sum of £——, if three or more, the sum of £——; SECONDLY, in case of such person having been hereby made tenant for life of a moiety of the said premises; if there shall be only one such child (other than as aforesaid), the sum of £——, if only two, the sum of £——, if three or more, the sum of £——; such sum to be vested in and payable to such child, or all or any one or more of such children, at such time or times, in such shares if more than one, and subject to such provisions for maintenance, education, and advancement, and otherwise for the benefit of such child or all or any one or more of such children, as the person for the time being exercising this power shall direct: AND, by the same deed or will (but subject as aforesaid) to charge the premises charged with such portion or portions with an annual sum, not exceeding interest on such portion or portions at £4 per cent. per annum, for the maintenance and education of the child or children for whom such portion or portions shall be charged, until such portion or portions shall become payable; to commence at such date or dates, to be raised in such manner, and paid at such times, and to such person or persons, as the person for the time being exercising this power shall direct; AND by the same deed or will (but subject

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as aforesaid) to appoint the premises, or moiety of the premises, charged as aforesaid to any trustee or trustees for any term of years, with or without impeachment of waste, upon such usual trusts for raising the said principal money and annual sum so charged as aforesaid by mortgage or otherwise as the person for the time being exercising this power shall think fit. PROVIDED ALWAYS that no such portion or annual sum as last aforesaid shall take effect as an actual charge, unless the person charging the same shall be or afterwards become entitled, under the limitations herein contained, to the possession or the receipt of the rents and profits of the said premises, or of the moiety thereof in relation to which such charge shall have been made, or unless some issue of such person shall, or would, if of full age, become so entitled. PROVIDED ALSO that if the entirety of all or any part of the said premises would by reason of the exercise of this power be liable at any one time to the payment of a larger principal sum in the whole than £——, or if a moiety of all or any part of the said premises would by reason of the exercise of this power be liable at any one time to the payment of a larger principal sum in the whole than £——, the charge or charges, or part of a charge or charges, occasioning such excess shall sink into the premises or moiety of the premises on which the same shall be charged, and not be raiseable; and the said principal sums shall severally have priority according to the priority, in order of limitation, of the estates of the persons charging the same respectively. AND I DECLARE that it shall be lawful for the person or

The portions charged not together to exceed a certain amount:

Power to grant leases (ordinary);

XIII. persons who for the time being shall be tenant or tenants for life in possession of the said premises hereinbefore devised under the limitations herein contained, being of full age, and also for the trustees of my will during the minority of the person or persons who for the time being shall be tenant or tenants for life, or tenant or tenants in tail male or in tail by purchase, in possession of the said premises under the aforesaid limitations, or during the minority of any one or more of such persons if more than one, by deed to appoint, by way of lease, all or any part of the said premises, for any term not exceeding twenty-one years in possession, at the best rent that can reasonably be obtained, and without fine or premium; and so as there be contained in every such lease a condition of re-entry for non-payment, within a reasonable time to be therein specified, of the rent thereby reserved; and so as the lessee do execute a counterpart thereof, and do thereby covenant for payment of the rent thereby reserved: AND ALSO by deed to appoint by way of lease any part or parts of the said premises to any person or persons who shall improve the same, by erecting thereon any house or building, or by rebuilding, repairing, enlarging, or improving any house or building then standing thereon, or shall covenant to do so within two years after the date of such appointment, for any term not exceeding ninety-nine years in possession, at the best yearly rent that can be reasonably obtained, without fine or premium, and so as there be contained in every such lease a condition of re-entry on non-payment, within a reasonable time to be therein

Building leases;

XIII.

specified, of the rent thereby reserved, and so as the lessee do execute a counterpart thereof, and do thereby covenant for payment of the rent thereby reserved; AND ALSO by deed to appoint by way of lease all or any of the mines, minerals, coals, quarries, stones, clay, sand, and other substances in, under, or upon the said premises, or any part or parts thereof, either with or without any messuages, buildings, or lands, convenient to be held with the same respectively, and either with or without the surface of the lands in or under which the same or any part thereof respectively shall be, and whether the same shall have been previously opened and worked or not, for any term not exceeding sixty years in possession, with full licence and authority to search, bore, drive, and sink for, work, get, and raise the said minerals, coals, quarries, stones, clay, sand, and other substances, and to do whatsoever shall be needful for the winning, working, getting, washing, cleansing, and smelting of such minerals and substances, and for the manufacturing, carrying away and disposing of the same; at the best rents, tolls, duties, royalties, or reservations, by the acre, the ton, or otherwise, that can reasonably be obtained, without fine or premium; AND so as there be contained in every such lease a condition of re-entry, on non-payment, within a reasonable time to be therein specified, of the rents, tolls, duties, royalties, or reservations thereby reserved; AND so as the lessee do execute a counterpart thereof, and do thereby covenant for the due payment of the rents, tolls, duties, royalties, or reservations thereby reserved. AND I DECLARE that it shall be lawful

Mining leases.

Power of sale and exchange.

XIII. for the trustees of my will, during the life or lives of the person or persons who for the time being shall be tenant or tenants for life in possession of the said premises hereinbefore devised, under the limitations herein contained, and of full age, with his, her, or their consent in writing, AND ALSO during the minority of any one or more of the persons (if more than one) who for the time being shall be tenants for life or tenants in tail male or in tail by purchase in possession of the said premises under the aforesaid limitations, with the consent in writing of such one or more of such persons as shall be of full age, and during the minority of the person or all the persons who for the time being shall be tenant or tenants for life or tenant or tenants in tail male or in tail by purchase in possession under the aforesaid limitations, at the discretion of them or him the trustees of my will, to sell or exchange for other messuages, lands or hereditaments in England or Wales all or any part of the said premises hereinbefore devised, and upon any such exchange to give or receive any money for equality of exchange; [AND I DECLARE that any such sale may be by public auction or private contract, and that the trustees of my will may make any stipulations as to title or otherwise in any conditions of sale or contract for sale or exchange of the said premises or any part thereof, and may buy in or rescind or vary any contract for sale or exchange, and re-sell, or re-exchange, without being answerable for any consequent loss;] AND I DECLARE that upon any such sale or exchange it shall be lawful for the trustees of my will, with

such consent or at such discretion as aforesaid, by deed to revoke all or any of the uses, trusts, powers and provisoes hereinbefore declared, or to be declared under any of the powers hereinbefore contained (but subject to every mortgage or other disposition which may have been made under the trusts of the said term of 1000 years or of any term of years to be limited under the aforesaid powers of jointuring or charging portions, and subject to every lease which may have been granted under any power of leasing hereinbefore contained), and by the same or any other deed to declare any uses, estates or trusts of the premises sold which shall be thought expedient for carrying such sale or exchange into effect: AND I DECLARE that, on any such sale or exchange as aforesaid of all or any part of the said premises, all or any of the mines, minerals, coals, quarries, stones, clay, sand and substances being in, under or upon all or any part of the premises sold or given in exchange may be excepted or reserved from such sale, and further that the power of sale or exchange hereinbefore contained shall be deemed to authorize the sale or giving in exchange of all or any of such mines, minerals, coals, quarries, stones, clay, sand and substances apart from the surface and any other portions of all or any part of the lands in, under or upon which such mines, minerals, coals, quarries, stones, clay, sand and substances shall be; which exception or reservation, sale or giving in exchange, may include all such rights and powers of searching for, working, carrying away and disposing of the said minerals, coals, quarries, stones, clay, sand and substances, or incidental thereto, as to the trustees

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Minerals may be reserved from sale, or sold apart from surface.

XIII. Disposal of purchase-money.

of my will may seem fit: AND I DECLARE that the trustees of my will shall receive the money payable upon any such sale or exchange as aforesaid, and invest the same in the purchase of other messuages, lands or hereditaments in England or Wales for an estate in fee simple, or of lands of leasehold, copyhold or customary tenure convenient to be held therewith or with any hereditaments subject to the uses or trusts of this my will; yet so that, during the life or lives of any person or persons who for the time being shall be tenant or tenants for life in possession, or tenant or tenants in tail male or in tail in possession by purchase of the said premises under the aforesaid limitations, every such purchase shall be made with his, her or their consent in writing, if of full age, or if there shall be more than one such person, then with the consent in writing of such one or more of such persons (if any) as shall for the time being be of full age. AND I DECLARE that the trustees of my will shall settle or cause to be settled all such of the messuages, lands or hereditaments so to be purchased or taken in exchange as aforesaid, as shall be freeholds of inheritance, to the uses, upon the trusts, and with and subject to the powers, provisoes and declarations, herein limited and declared, or under the said powers of jointuring or charging portions to be limited and declared, concerning the said premises hereinbefore devised, or as near thereto as the deaths of parties and other intervening circumstances will admit of (but not so as to increase or multiply charges); AND SHALL SETTLE or cause to be settled all such of the messuages lands and hereditaments to be purchased

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or taken in exchange as aforesaid as shall be of leasehold, copyhold or customary tenure, upon such trusts, and with and subject to such powers, provisoes and declarations, as shall correspond with the uses, trusts, powers, provisoes and declarations herein limited and declared, or under the said powers of jointuring or charging portions to be limited and declared, concerning the said premises hereinbefore devised, or as near thereto as the different tenure of the premises, the rules of law and equity, the deaths of parties, and other intervening circumstances will admit, but not so as to increase or multiply charges; AND so that no messuages, lands or hereditaments so to be purchased, held upon a lease or leases for years, nor any share of any such messuages, lands or hereditaments, shall vest absolutely in any tenant in tail male or in tail by purchase of the said premises or any share therein under the limitations hereinbefore contained, unless he or she shall attain the age of twenty-one years; but on his or her death under that age, such last-mentioned messuages, lands, or hereditaments, or his or her share therein, shall devolve in the same manner as if the same had been freehold of inheritance, and had been settled accordingly. AND I DECLARE that it shall be lawful for the trustees of my will to raise any money which shall be required to be paid by them or him for equality of exchange, by mortgage (either in fee or for any term of years, and either with or without a power of sale) of any messuages, lands, or hereditaments, for the time being subject to the uses or trusts of this my will, and to do all such acts as shall be necessary for effectuating any

Power to raise money payable for equality of exchange by mortgage.

XIII. Power to apply purchase-money in discharge of incumbrances.

such mortgage. AND I DECLARE that it shall be lawful for the trustees of my will, upon the request of the person or persons who for the time being shall be tenant or tenants for life in possession, or tenant or tenants in tail male or in tail in possession, by purchase, of the said premises hereinbefore devised, such person or persons having attained the age of twenty-one years, or if such person or persons or any one or more of such persons (if more than one) shall be under that age, then at the discretion of them or him the trustees of my will to apply any money to be received upon any such sale as aforesaid, or for equality of exchange upon any such exchange as aforesaid, in or towards paying off any mortgage or other charge or incumbrance for the time being affecting all or any of the messuages, lands, or hereditaments, then subject to the subsisting uses or trusts of this my will: AND I DECLARE that, until the money to be received upon any such sale or exchange as aforesaid shall be disposed of in the manner hereinbefore mentioned, the trustees of my will may, with such consent or at such discretion as last aforesaid, invest such money in their or his names or name in the public funds of Great Britain, or upon real securities in England or Wales, and from time to time, change such investments for others of the kinds hereby authorized; AND I DECLARE that the annual income of such investments shall be paid to the same person or persons, and for the same purposes, as the rents and profits of the messuages, lands, or hereditaments, to be purchased with the money last aforesaid, would be payable in case such purchase and settlement as aforesaid were actually made. I

Interim investment.

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DEVISE all my copyhold and customary messuages, lands, and hereditaments, UNTO the said C. D. and E. F., their heirs and assigns according to the customs of the manors of which the same are holden respectively, UPON such trusts, and with, under, and subject to such powers, provisoes, and declarations, as shall correspond with the uses, trusts, powers, provisoes, and declarations, hereinbefore limited and declared concerning the freehold premises hereinbefore devised, as nearly as the different tenure of the premises and the rules of law and equity will permit; but not so as to increase or multiply charges. I DEVISE AND BEQUEATH all my leasehold messuages, lands, and hereditaments, whether holden for lives or for years, UNTO the said C. D. and E. F., their executors, administrators, and assigns, UPON trust, that the trustees of my will shall, out of the rents and profits thereof, pay the rents reserved by the leases thereof respectively, and perform and observe the covenants and conditions in such leases respectively contained, and on the part of the several lessees, or their respective executors, administrators, or assigns, to be performed or observed; AND, subject thereto, shall hold the said leasehold premises UPON such trusts, and with, under, and subject to such powers, provisoes, and declarations, as shall correspond with the uses, trusts, powers, provisoes, and declarations, hereinbefore limited and declared, concerning the said freehold premises hereinbefore devised, as nearly as the different tenure of the premises and the rules of law and equity will permit, but not so as to increase or multiply charges. AND I DECLARE that none of my

Devise of copyholds, upon trusts corresponding with uses of freeholds.

Devise and bequest of leaseholds to the like effect.

XIII said leasehold messuages, lands, or hereditaments, nor any share therein, shall vest absolutely in any person hereby made tenant in tail male or in tail by purchase thereof who shall die under the age of twenty-one years; but on his or her death shall devolve in the same manner as if such messuages, lands, or hereditaments, or the share therein of the person so dying as aforesaid, had been freehold of inheritance included in the devise in strict settlement hereinbefore contained. I BEQUEATH all the furniture, plate, linen, china, glass, books, pictures, and other articles of household use and ornament, which shall be in, about, or belonging to my mansion-house, called —— Hall, at my decease, UNTO the said C. D. and E. F., their executors, administrators, and assigns, UPON TRUST to allow the same furniture, plate, and other articles, to go and devolve as heirlooms, together with the said premises hereinbefore devised, so far as the rules of law and equity will permit; but so nevertheless that the same shall not, nor shall any share thereof, vest absolutely in any person hereby made tenant in tail male or in tail by purchase who shall die under the age of twenty-one years; but on the death of such person the same furniture, plate, and other articles, or the share therein to which such person would be entitled, shall go and devolve as if the same had been freeholds of inheritance, and had been devised to the same uses as the said freehold premises hereinbefore devised. AND I DECLARE that, as soon as convenient after my decease, an inventory shall be taken in duplicate of such furniture, plate and other articles as aforesaid,

Bequest of furniture, &c., to trustees of will, to devolve as heirlooms.

and each copy thereof shall be signed by the trustees of my will, and one of such copies shall be kept by the tenant or tenants for life in possession for the time being of the said freehold premises, and the other of them by the trustees of my will, and such tenant or tenants for life, on such furniture, plate and other articles being delivered to him, her or them shall sign a receipt for the same on one of the duplicate copies of the said inventory. AND I DECLARE that it shall be lawful for the trustees of my will, at the request in writing of such tenant or tenants for life as aforesaid, to sell all or any of the said furniture, plate and other articles, or exchange the same for similar articles, provided that the money to arise from such sale shall be expended in the purchase of articles similar to those sold; and the articles to be so taken in exchange or purchased shall be held upon the same trusts as the furniture, plate and other articles hereby bequeathed. I BEQUEATH all my personal estate not hereinbefore bequeathed, UNTO the said W. X. and Y. Z., their executors and administrators, UPON TRUST to sell, call in, and convert into money, such part thereof as shall not consist of money; AND UPON TRUST, out of the money to arise thereby, and out of the money belonging to me at my death, to pay my debts, funeral and testamentary expenses, so far as such moneys shall extend; AND I DIRECT the said W. X. and Y. Z., or the survivor of them, his executors or administrators, to pay the residue (if any) of the said moneys unto the trustees of my will, who shall hold the same, UPON the same trusts, and subject to the same powers, provisoes and declarations, as

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Power to sell or exchange furniture, &c.

Proceeds to be expended in purchase of similar articles.

General personal estate to trustees of term,

For conversion,

payment of debts, &c.;

Residue to trustees of will, for investment.

XIII. are hereinbefore declared and contained concerning the moneys to arise from the sale of any part of my said real estate under the power of sale hereinbefore contained. I DECLARE that upon any mortgage by the trustees of the term, or the trustees of my will, purporting to be made under any of the trusts or powers herein contained, the mortgagee shall not be bound to inquire whether the money proposed to be borrowed by such trustees on the security of such mortgage is really required for any of the purposes of my will, nor whether more money is being borrowed than is really wanted for any of such purposes; nor otherwise to inquire into the necessity or propriety or expediency of such mortgage. I APPOINT the said W. X. and Y. Z. executors of this my will, AND I APPOINT my said wife and the said W. X. and Y. Z. guardians of my infant children during their respective minorities. [AND I HEREBY DECLARE that, if the several trustees hereby constituted, or any of them, or any trustee or trustees to be appointed as hereinafter provided, shall die, or be abroad, or desire to be discharged from, or refuse or become incapable to act in, the trusts hereby reposed in them respectively, before such trusts shall have been fully performed, then and in every such case it shall be lawful for the surviving or continuing trustees or trustee of the class in which any such vacancy or disqualification shall occur (and for this purpose every refusing or retiring trustee shall, if willing to act in the execution of this power, be considered a continuing trustee) or for the acting executors or executor, administrators or administrator, of such last surviving or continuing trustee, to

Mortgagees' indemnity clause.

Executors and guardians.

Power to appoint new trustees.

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appoint a new trustee or new trustees in the place of the trustee or trustees so dying, or being abroad, or desiring to be discharged, or refusing or becoming incapable to act as aforesaid; and upon any such appointment the number of trustees may be increased or diminished; AND upon any such appointment, the trust property (if any) then vested in such surviving or continuing trustees or trustee as aforesaid, or in the heirs, executors or administrators of the survivor of such trustees shall be conveyed or assigned so that the same may be vested in the new trustee or trustees, either jointly with the surviving or continuing trustee or trustees of the same class, or solely, as the case may require: AND every such new trustee may, both before and after such conveyance and assignment, act in the execution of the powers and trusts in respect of which he shall have been appointed trustee, as fully as if he had been constituted a trustee by this my will.]

Trustees indemnity clause, as to purchases of leaseholds, &c.

AND I DECLARE that, upon the purchase or taking in exchange of any leasehold messuages, lands or hereditaments, the trustees of my will shall be at liberty to dispense wholly or partially with the production or investigation of the lessor's title or otherwise, upon the purchase, taking in exchange, or lending money upon the security of, any messuages, lands or hereditaments, to accept less than a marketable title, and shall not be answerable for any loss thereby occasioned, unless the same shall happen through their own wilful default respectively.

Revocation clause.

AND HEREBY REVOKING all wills previously made by me, I DECLARE this to be my last will and testament.

IN WITNESS, &c.

XIII. There are various forms of limitation which fall within the description of a devise in strict settlement; but it may be stated generally that, in any case, the main objects to be accomplished are two: viz., to tie up, or settle, the property, for as long a time as the law allows, and to allow it to devolve as far as possible in the direct male line from the testator. Referring to the above precedent, it will be seen that this is sought to be effected by giving first an estate for life to the testator's eldest son, then estates in tail *male* to his sons successively; so with the testator's second son (these being the only sons *in esse* at the date of the will); then estates in tail *general* to the sons of the testator's living sons successively, then estates tail to the daughters of each successive living son of the testator, as tenants in common, with cross remainders; then estates for life to the testator's living daughters as tenants in common, with remainder, as to each daughter's share, to her sons successively in tail, and afterwards to her daughters as tenants in common in tail, with cross remainders as to the daughters' shares; then cross remainders as to the shares of the testators' daughters; then estates in tail male to the testator's future sons successively, then estates in tail general to such future sons successively, then estates tail to future daughters, as tenants in common, with cross remainders, then an estate for life to a nephew of the testator, followed by estates in tail male to his sons successively, and an ultimate remainder to the testator's own right heirs.

Thus, it will be seen, a son of the testator's second son L. M. will take before a daughter of the first son I. K.; and further, so long as the entail remains unbarred, whenever there is a failure of male descendants of the eldest son of I. K., the estate will go over, either to the other sons of I. K. and their respective male descendants successively, or, failing these, to L. M. and his sons, &c., successively, in like manner. The practical effect of interposing estates tail general to the sons of I. K. and L. M. between the estates tail male to their sons and the estates tail to their daughters is to enable a daughter, or more remote female descendant, of a son of I. K. to take before a daughter of I. K. or L. M., which is obviously desirable, because otherwise the estate might be shifted merely from one female branch of the family to another. This consideration would not come into play if, according to

the usual practice, the entail were barred as soon as the first tenant in tail came of age, but instances are sometimes found of entails remaining unbarred for several generations. In the case of the testator's daughters, as the line of male descent will already have been broken by their life estates falling into possession, if that event should happen, and as the ownership will no longer be centred in one person, there are obviously not so strong reasons for limiting estates in tail *male* to their sons.

Sometimes, estates for life are given successively to all the testator's children, whether born before or after the date of the will; but the plan is open to the objection that the will does not show on the face of it who the tenants for life are; a matter which can only be made clear by ascertaining what was the actual state of the family at the testator's death. We should prefer, therefore, to make tenants for life only the children actually in existence at the date of the will, leaving it to a future will to regulate the interests of after-born children. A mere reference to the will will then always be sufficient to show who are tenants for life and what classes of persons are tenants in tail.

It is not absolutely necessary to have two sets of trustees for such a will as the above, but the arrangement has its advantages. The responsibilities of C. D. and E. F., the "trustees of the will," relate to the real estate and the interests of the eldest son, whilst W. X. and Y. Z. have the care of the general personal estate, and the duty of raising the younger children's portions and protecting their interests. Thus different duties are vested in distinct sets of persons, and any possible confusion which might have arisen from the same trustees assigning the 1000 years' term by way of mortgage, and also exercising the power of sale, is avoided.

In the name and arms clause, the limitation to trustees, on forfeiture by a tenant for life, for the purpose of preserving the contingent remainders in favour of children subsequently born, is now rendered unnecessary by the statute 40 & 41 Vict. c. 33, which, as regards future instruments, enacts that every contingent remainder which would have been valid as a springing or shifting use or executory devise or other limitation, had it not had a sufficient estate to support it as a contingent remainder, shall, in the event of the particular

XIII. estate determining before the contingent remainder vests, be capable of taking effect in all respects as if the contingent remainder had originally been created as a springing or shifting use or executory devise or other executory limitation. But it is still necessary to show who is to be entitled to the rents during the remainder of the life of a tenant for life who has forfeited, and who for the time being has no issue entitled in remainder. (See notes to Davidson's Precedents, vol. iii., pp. 289, 311, 2nd edition.)

Powers of sale and exchange should never be omitted from wills of this class. It may be considered certain that, at some time or other, it will be found desirable to dispose of some portion of the property, or to acquire land which may have unexpectedly come into the market, and the addition of which to the estate would be an improvement; and if the will contains no power for the purpose, the estate will have to bear the expense of an application to the Court under the Settled Estates Act, 1877, for permission to sell, or under the Settled Land Act, 1882, with reference to the investment of the money. Or again, it is not at all improbable that some part may be taken for a railway or other public undertaking: in which case, if there is no one having power under the will to sell and receive the purchase-money, the result will be that the Company will pay the money into Court under the Lands Clauses Act, 1845, and a petition will be necessary in order to get the fund invested, and the income paid to the tenant for life, &c.

The powers for sale lately given by the Settled Land Act, 1882, do not go very much further than those previously conferred by the Settled Estates Act; the chief differences being that the tenant for life may negotiate a sale, instead of the trustees (the trustees, if any, being still imported into the transaction at a later stage), that the procedure is simplified by dispensing with the necessity of a petition to the Court *before the sale*, and that subject to certain restrictions, the purchase-money may be applied in carrying out improvements.

Unless, however, there are either

(1) Trustees with a power of sale under the settlement;

(2) Trustees with power to consent to a sale under the settlement, or

(3) Trustees appointed by the settlement or will for the purposes of the Act, XIII.

who may receive and invest the purchase-money, it has to be paid into Court, and subsequent application made by petition or summons for its investment under the direction of the Court. Where there are trustees of the first or second kind, it is obvious that the Act confers a very slight advantage, and none whatever from the point of view of a settlor or testator, who presumably would prefer that the power of sale should be vested in the trustees only.

But if the will were to appoint trustees for the purposes of the Act, and confer no express powers, then the Act would have a similar effect to 23 & 24 Vict. c. 145, now repealed (and which referred to sales by trustees), in supplying all particular powers and directions as to the mode of sale and the investment of the purchase-money.

The powers for granting ordinary and building leases given by the Settled Land Act coincide with those given in the usual form of settlement, &c., in all material points, except that a fine is allowed to be taken, and a peppercorn rent may be reserved for five years on a building lease; privileges which, having regard to section 56, it seems may be exercised notwithstanding an express prohibition in the settlement or will. The statutory power to grant mining leases, however, presents this material difference, viz., that in the ordinary case of a tenant for life without impeachment of waste, one-fourth of the rent must be capitalized.

It is important that power should be expressly given by the will, not only to sell the surface reserving the minerals, but also to sell the minerals apart from the surface.

The clauses relating to the wife's rent-charge, at pages 94 and 95, which are inserted between brackets, may be omitted, if the draftsman is content to rely upon the Conveyancing and Law of Property Act, 1881, which, by section 44 gives these powers in all cases, so far as they might have been conferred by the instrument under which the rent-charge arises; but it would not perhaps be equally advisable to omit the trusts of the term of 1000 years at page 100, in reliance upon sub-section 4 of the same section, as the form of trust in the precedent possesses the advantage of naming a definite term of years, for which, or for less than which, the property may be mortgaged,

XIV. messuages, lands, and hereditaments [by public auction or by private contract, together or in parcels, at one time or at several times, and subject or not subject to any special or other conditions of sale or stipulations as to title or otherwise which the trustees or trustee for the time being of my will shall think expedient; and with power to buy in all or any portion of the premises at any auction, or to rescind any contract for sale, and re-sell, without being liable for any consequent loss]; AND UPON TRUST to convey and assign the premises when sold to the purchaser or purchasers thereof respectively; AND UPON TRUST to sell, call in, and convert into money all such parts of my other personal estate as shall not consist of money, or of such stocks, funds, shares, or securities, as are hereinafter mentioned. AND I DIRECT my executors to sell all my copyhold or customary messuages, lands, and hereditaments [with the same discretions as to the mode of sale and otherwise as are hereinbefore given to the said C. D. and E. F. with reference to my freehold and leasehold messuages, lands, and hereditaments]. AND to bargain and sell, or otherwise assure the premises when sold to the purchaser or purchasers thereof respectively. AND I DIRECT the trustees or trustee for the time being of my will to hold the net proceeds of the sale of my said freehold, leasehold, copyhold, and customary messuages, lands, and hereditaments, and of the sale and conversion of such other portions of my personal estate as are hereinbefore directed to be sold and converted, and also any moneys belonging to me at my decease. UPON TRUST, in the first place, to pay

to sell and convert, except existing securities of the kind authorized.

Direction to sell copyholds;

Out of pro-

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thereout my debts, and my funeral and testamentary expenses, and to invest the residue, in their or his names or name, in any of the public funds of the United Kingdom, or upon the security of real property in Great Britain, but not in Ireland, or in or upon the debentures, debenture stock, or guaranteed preference, or ordinary stock or shares, of any corporation or corporations, or public company or companies incorporated by Royal Charter, or by Act of Parliament, and being within any part of the United Kingdom, and which at the time of such investment shall be paying dividends on their ordinary stocks or shares. AND I EMPOWER the said trustees or trustee from time to time to change all or any of such investments as last aforesaid, as well as any investments, of the same kinds, existing at my decease, of any parts of my personal estate, for any other or others of the kinds hereby authorized; PROVIDED ALWAYS that no stocks, funds, shares, or securities, in which a daughter of mine who shall have attained the age of twenty-one years shall have a life interest under the trust hereinafter contained, shall be changed for other investments without her consent in writing. AND I DECLARE that the expression "the trust fund," hereinafter used, shall be taken to mean the said residue of the net proceeds of sale and conversion of the said messuages, lands, and hereditaments, and of the said personal estate hereinbefore directed to be sold and converted, and of moneys belonging to me at my decease, or the stocks, funds, shares, and securities in or upon which the said residue shall for the time being be invested, and

ceeds, and ready money, trustees to pay debts, &c., and invest residue.

"The trust fund."

XIV. messuages, lands, and hereditaments [by public auction or by private contract, together or in parcels, at one time or at several times, and subject or not subject to any special or other conditions of sale or stipulations as to title or otherwise which the trustees or trustee for the time being of my will shall think expedient; and with power to buy in all or any portion of the premises at any auction, or to rescind any contract for sale, and re-sell, without being liable for any consequent loss]; AND UPON TRUST to convey and assign the premises when sold to the purchaser or purchasers thereof respectively; AND UPON TRUST to sell, call in, and convert into money all such parts of my other personal estate as shall not consist of money, or of such stocks, funds, shares, or securities, as are hereinafter mentioned. AND I DIRECT my executors to sell all my copyhold or customary messuages, lands, and hereditaments [with the same discretions as to the mode of sale and otherwise as are hereinbefore given to the said C. D. and E. F. with reference to my freehold and leasehold messuages, lands, and hereditaments]. AND to bargain and sell, or otherwise assure the premises when sold to the purchaser or purchasers thereof respectively. AND I DIRECT the trustees or trustee for the time being of my will to hold the net proceeds of the sale of my said freehold, leasehold, copyhold, and customary messuages, lands, and hereditaments, and of the sale and conversion of such other portions of my personal estate as are hereinbefore directed to be sold and converted, and also any moneys belonging to me at my decease. UPON TRUST, in the first place, to pay

to sell and convert, except existing securities of the kind authorized.

Direction to sell copyholds;

Out of pro-

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thereout my debts, and my funeral and testamentary expenses, and to invest the residue, in their or his names or name, in any of the public funds of the United Kingdom, or upon the security of real property in Great Britain, but not in Ireland, or in or upon the debentures, debenture stock, or guaranteed preference, or ordinary stock or shares, of any corporation or corporations, or public company or companies incorporated by Royal Charter, or by Act of Parliament, and being within any part of the United Kingdom, and which at the time of such investment shall be paying dividends on their ordinary stocks or shares. AND I EMPOWER the said trustees or trustee from time to time to change all or any of such investments as last aforesaid, as well as any investments, of the same kinds, existing at my decease, of any parts of my personal estate, for any other or others of the kinds hereby authorized; PROVIDED ALWAYS that no stocks, funds, shares, or securities, in which a daughter of mine who shall have attained the age of twenty-one years shall have a life interest under the trust hereinafter contained, shall be changed for other investments without her consent in writing. AND I DECLARE that the expression "the trust fund," hereinafter used, shall be taken to mean the said residue of the net proceeds of sale and conversion of the said messuages, lands, and hereditaments, and of the said personal estate hereinbefore directed to be sold and converted, and of moneys belonging to me at my decease, or the stocks, funds, shares, and securities in or upon which the said residue shall for the time being be invested, and

ceeds, and ready money, trustees to pay debts, &c., and invest residue.

"The trust fund."

XIV. also any of the stocks, funds, shares, and securities hereinbefore specified, in or upon which any part of my personal estate shall be invested at my decease, or any stocks, funds, or securities for which the same may be changed under the powers of this my will. AND I DIRECT the said trustees or trustee to hold three fifth shares of the trust fund, IN TRUST for my three sons G. B., I. B., and L. B., respectively, for their respective absolute use; AND TO HOLD one other fifth share of the trust fund IN TRUST to pay the annual income thereof to my daughter N. B., during her life, for her separate use, and so that she shall have no power during coverture to alienate or charge all or any part of her life interest in such share, or to anticipate all or any portion of the income thereof, and so that her receipts alone shall be sufficient discharges to the said trustees or trustee for such income when due and payable; AND after her decease I DIRECT the said trustees or trustee to hold the said last named one fifth share of the trust fund, IN TRUST for all or any one or more of the children and remoter issue of the said N. B. (such remoter issue being born in her lifetime), in such shares, if more than one, for such interests, and generally in such manner as she the said N. B. shall, whether sole or covert, by deed or will appoint; AND in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the child or all the children of the said N. B. who shall attain the age of twenty-one years, or die under that age, leaving lawful issue living at his or her death, or at their deaths respectively; such children, if more than one, to take

Trust for testator's five children; sons to take absolutely, daughters' shares to be held in settlement.

of all or any the children or child of mine who shall be then dead, to be equally divided between them if more than one; but the issue of any one deceased child of mine to count for the purpose of such division as only one. I EMPOWER the trustees or trustee for the time being of my will to apply all or any part of the income of any portion of the trust fund to which any infant child or other issue of mine shall for the time being be presumptively, contingently, or absolutely entitled in possession, whether for life or otherwise, under this my will, in or towards the maintenance and education or otherwise for the benefit of such child or other issue. AND I DIRECT that in the case of any grandchild or more remote issue of mine the said trustees or trustee may either themselves apply the said income in manner aforesaid, or may pay the same to the father or guardian or guardians of such issue to be so applied without any liability on the part of the said trustees or trustee to see to the due application thereof. AND I DIRECT the surplus of such income to be accumulated by investing the same in or upon any of the stocks, funds, shares, or securities hereinbefore mentioned, but with power for the said trustees or trustee to apply any of such accumulations as if the same were income of the then current year. AND I EMPOWER the said trustees or trustee to apply any part of the capital sum to which any male issue of mine shall for the time being be presumptively, contingently, or absolutely entitled under this my will, not exceeding in the case of a son one-third, and not exceeding in the case of a grandson or more remote issue one-half of such

XIV.

Maintenance.

Advancement of sons or grandsons.

XIV. to the trusts and powers of appointment hereinbefore contained concerning the share hereinbefore given in trust for my daughter N. B. for life with remainders over as hereinbefore mentioned; and subject to the power of advancement hereinafter contained, I DECLARE that in case any of my said children shall die under the age of twenty-one years without leaving lawful issue living at his or her decease, then and so often as the same shall happen the share of the trust fund hereinbefore given in trust for the child so dying as last aforesaid, or for such child for life with remainders over as the case may be, together with all parts of shares, if any, accruing under this limitation, shall be divided into as many parts as there shall be children of mine and issue of deceased children of mine then surviving, the issue of any one deceased child of mine to count for this purpose as only one person; and such parts shall be held in trust for my surviving children and other issue respectively in manner following, namely, one of such parts shall be held in trust for each of my sons respectively, or my son then surviving, if any, and one of such parts shall be held upon trusts for the benefit of each of my daughters respectively, or my daughter then surviving, if any, and the children or next of kin of each or any such daughter and with powers of appointment by each or any such daughter similar in all respects to the trusts and powers hereinbefore declared concerning the original share hereinbefore given in trust for my daughter N. B. for life with remainders over as hereinbefore mentioned; and the other or others of such parts (if any) shall be held in trust for the issue then living

Cross limitation, in case of deaths under twenty-one without issue.

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of all or any the children or child of mine who shall be then dead, to be equally divided between them if more than one; but the issue of any one deceased child of mine to count for the purpose of such division as only one. I EMPOWER the trustees or trustee for the time being of my will to apply all or any part of the income of any portion of the trust fund to which any infant child or other issue of mine shall for the time being be presumptively, contingently, or absolutely entitled in possession, whether for life or otherwise, under this my will, in or towards the maintenance and education or otherwise for the benefit of such child or other issue. AND I DIRECT that in the case of any grandchild or more remote issue of mine the said trustees or trustee may either themselves apply the said income in manner aforesaid, or may pay the same to the father or guardian or guardians of such issue to be so applied without any liability on the part of the said trustees or trustee to see to the due application thereof. AND I DIRECT the surplus of such income to be accumulated by investing the same in or upon any of the stocks, funds, shares, or securities hereinbefore mentioned, but with power for the said trustees or trustee to apply any of such accumulations as if the same were income of the then current year. AND I EMPOWER the said trustees or trustee to apply any part of the capital sum to which any male issue of mine shall for the time being be presumptively, contingently, or absolutely entitled under this my will, not exceeding in the case of a son one-third, and not exceeding in the case of a grandson or more remote issue one-half of such

Maintenance.

Advancement of sons or grandsons.

XIV. capital sum, in placing such issue in any profession or business, or otherwise for his advancement in the world; but so that, in the case of a grandson or more remote issue, such application shall not be made during the lifetime of my daughter having a life interest in the fund of which such capital sum shall form part without her consent in writing, such consent being valid notwithstanding her coverture. IN WITNESS, &c.

Here it will be observed that the freeholds and leaseholds are vested in the trustees in trust for sale, whilst the executors are directed to sell the copyhold and customary lands, the will containing no devise of the legal estate in the latter.

The object of this method of dealing with copyholds, &c., is to avoid the necessity for the trustees being admitted, and thus becoming liable to the payment of the admission fines and fees. Under such a direction to sell as above, the acting executors would convey by bargain and sale, for an example of which see Davidson's Precedents, vol. ii., part i., No. 33, and that assurance, following upon the will, would entitle the purchaser to admission. The reference to a bargain and sale in the precedent is merely intended to indicate, both to vendors and purchasers, the proper mode of conveyance; since we have commonly found in practice, where such a will has been in question, that there was much difficulty in convincing either the purchaser's solicitor, or the steward of the manor, or both, that it was not necessary to admit the customary heir or the executors, and that the latter could convey without having the legal estate vested in them.

The portion of the trust for sale, which has been placed within brackets, is substantially supplied by section 35 of the Conveyancing and Law of Property Act, 1881; and therefore as it relates to matters which would immediately concern the solicitor in charge of the sale (who would be acquainted with the Act) rather than the *cestuis que trust*, it might be omitted without material disadvantage.

The objects aimed at in defining and adhering to a term, such as "the trust fund," in the above will, or such as "my

trustees," &c., in others of these precedents, are of course brevity, and clearness; brevity, in avoiding the frequent repetition of the words which would in their ordinary sense convey the required meaning, and clearness, in ensuring that a given word shall always express the same meaning throughout the will. And here we may be permitted to remark, for the benefit of our younger readers, that in a legal document the mere dread of tautology should never lead them to shrink from using the same word over and over again as frequently as the sense requires. In this respect, instead of taking an ordinary literary composition as his model, the student should rather think of a sum in algebra, in which the same symbols are used throughout to express the same numbers or qualities; and for arguments in favour of the practice of invariably using the same word to express the same idea we may refer him to the well-known "Essay on the Human Understanding," where the practice is strongly insisted on as one of the means by which the teachings of moral science might be rendered more reliable.

It will be noticed that all the testator's living children are here mentioned by name—a plan which, although objectionable in some cases, where the wife is living, owing to the danger of a subsequently-born—especially a posthumous—child being excluded, may yet be adopted without impropriety in the case of a widower; because then, of course, there can be no more legitimate children without a second marriage, which, by Section 18 of the Wills Act, would act as a revocation of the will, thus letting in the claim of the wife and later-born children to their distributive shares, in default of any further testamentary disposition. Having regard, however, to the substitutionary clause in the event of death under twenty-one without issue, the practical effect would have been much the same if the trustees had been directed to divide the trust fund into as many shares as there should be children of the testator who should attain twenty-one or leave issue, and hold such shares in trust absolutely for sons answering the qualification, and for daughters answering the qualification, and their issue, &c., as in the precedent, and the substitutionary clause could then have been dispensed with; but the present form is designedly given, in view of the fact that clients often show a preference for a certain form

XIV. or wording of a will, although the same legal effects might be produced in a simpler way.

We may mention that the distinction as to the mode of exercise of the general power of appointment given to N. B., viz., by deed or will when sole, and by will when covert, is quite exceptional; but it may be sometimes recommended where the testator wishes to place the fund or share as much as possible out of a husband's power, a will being always revocable, an appointment by deed not so, unless a power of revocation be expressly reserved. The distinction has not been made in the power to appoint amongst children, because any child of the daughter would be an object of the testator's bounty, and an appointment in favour of any one or more of her children, even though perhaps made under her husband's influence, would not fail to benefit one at least of the persons for whom the testator wishes to provide. The substitutionary clause here given differs from the one generally used in that it would take effect only in favour of surviving children of the testator, and issue of deceased children; not in favour of the executors or administrators of children who have obtained absolutely vested interests in the principal fund, but have died before the child whose share is in question. This may have the advantage of keeping the undistributed portion of the fund amongst the testator's descendants, and also of avoiding the necessity for applications to increase probate duty, and other troublesome proceedings, which unexpected additions to a deceased person's estate often entail.

As to the power of advancement in such a case as the above it should of course be borne in mind that, whilst the requirements of the children and grandchildren would presumably be much the same, the shares of the latter would probably be of much smaller amount; and therefore the power may judiciously allow of the application, for this purpose, of a larger proportion of the share in the case of the grandchildren than in the case of the children.

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WILL *of a* RETAIL TRADER. APPOINTMENT *of* WIFE (*during* WIDOWHOOD), *and two others*, TRUSTEES *and* EXECUTORS. WIFE *sole* GUARDIAN *of* CHILDREN *during* WIDOWHOOD; *afterwards the other* TRUSTEES. DEVISE *and* BEQUEST *of all* PROPERTY *to the* TRUSTEES. IN TRUST *to allow* WIFE *to use* FURNITURE, *&c., during* WIDOWHOOD, *and to convert other* PROPERTY, *except* CAPITAL *used in* BUSINESS. AND TO INVEST *proceeds of* CONVERSION, *after paying* DEBTS, *&c., and carry on* BUSINESS, *and pay* INCOME *to* WIFE *during* WIDOWHOOD, *she bringing up the* CHILDREN. AFTER *her* DEATH *or* MARRIAGE, *and on youngest* CHILD *attaining* TWENTY-ONE, PROPERTY *to be realized and* PROCEEDS *held in* TRUST *for* CHILDREN *who attain* TWENTY-ONE *or* MARRY. SONS *to have option of purchasing* BUSINESS. POWERS *for* MAINTENANCE *and* ADVANCEMENT, *and other suitable clauses.*

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of &c., haberdasher. I REVOKE all testamentary writings heretofore executed by me. I APPOINT my wife, C. B., during her widowhood, and my friends, E. F., of, &c., and G. H., of, &c., trustees and executrix and executors of my will; and I also appoint my said wife, during her widowhood, and after her decease or second marriage the said E. F. and G. H., guardian and guardians of my children during their respective minorities. AND I DEVISE AND BEQUEATH all property, both real and

Revocation clause.

Appointment of trustees, executors, and guardian.

XV. personal, belonging to me beneficially, UNTO the said C. B., E. F., and G. H., their heirs, executors, and administrators, UPON TRUST to permit my said wife to have the use, during her widowhood, of my household furniture, plate, linen, and china, and to allow the capital which shall be invested at my decease in my said business of a haberdasher, whether in the form of stock-in-trade, shop fittings, or otherwise to remain so invested; AND UPON TRUST to sell, call in, and convert into money all my real and the residue of my personal estate [such sale of my real estate to be made either together or in parcels, and either by public auction or by private contract, and subject to any stipulations as to title, evidence of title, or otherwise, which the trustees or trustee for the time being of my will may think fit, and with power for the said trustees or trustee to buy in the premises at any sale, or rescind any contract, and resell, without being liable for any consequent loss]; and to execute any assurances necessary or expedient for completing any such sale; AND UPON TRUST, out of the proceeds of such sale, calling in, and conversion into money as aforesaid, to pay my debts, funeral, and testamentary expenses, and invest the residue of such proceeds (other than such sum or sums as shall or may from time to time be employed as additional capital in the carrying on of my said business as hereinafter mentioned) in any of the public funds or Government securities of the United Kingdom, or of any colony or dependency of the United Kingdom, or of any foreign government, or upon the security of freehold, copyhold, or leasehold property in England or Wales, such leasehold

Wife to have use of furniture during widowhood;

Other property to be converted, except capital used in business. See Conveyancing and Law of Property Act, 1881, s. 35.

Trustees to pay debts and expenses,

and invest residue, except, &c.,

property having at least sixty years of the lease or leases thereof unexpired, or in or upon the debentures, debenture stock, or preference or ordinary stock or shares, of any dock, canal, railway, or banking company in Great Britain; PROVIDED that any such banking company shall have been registered as a company with limited liability, that any shares purchased shall at the time of the purchase thereof have been fully paid up, and that such dock, canal, railway, or banking company shall at the time of the investment be paying dividends on its ordinary stock or shares; and with power from time to time to change such stocks, funds, shares, or securities for others of any kind hereby authorized; AND UPON TRUST, during the widowhood of my said wife, and after her death or marriage, so long as any of my children shall be under the age of twenty-one years, to carry on my said business of a haberdasher, now carried on by me in the town of —— aforesaid, with power to employ for that purpose such capital as shall be employed therein at my decease, and such additional capital (not exceeding one-third of the remaining portion of my personal estate) as the trustees or trustee for the time being of my will shall or may from time to time think fit, and, at the discretion of the said trustees or trustee, from time to time to withdraw from the said business any portion of the capital for the time being employed therein, and to invest the same in any of the stocks, funds, shares, or securities hereinbefore mentioned; AND UPON TRUST, to pay the income arising from the said stocks, funds, shares, and securities, and the net profits produced by the said business, to my said

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and carry on business during widowhood of wife, and also during minority of children.

Income to wife during widowhood, she

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maintaining infant children.

On wife's re-marriage, the property to vest in the other trustees.

wife during her widowhood, she thereout maintaining, educating, and bringing up such of my children as shall for the time being be under the age of twenty-one years. AND I DECLARE that, in case my said wife shall marry again, she shall immediately upon such marriage cease to be a trustee and executrix of my will, and all property, whether real or personal, which immediately before such marriage was by virtue of my will vested in my said wife and the other trustees or trustee for the time being of my will shall, immediately after my said wife shall have so ceased as aforesaid to be a trustee of my will, vest in the trustees or trustee for the time being of my will only; or in case my said wife shall, immediately before such marriage, be the only surviving trustee of my will, then all such real or personal property as last aforesaid shall, immediately upon such marriage, vest in the person or persons who shall for the time being be the legal personal representative or representatives of the then last deceased trustee of my will; upon such of the trusts hereby declared as shall be then subsisting and capable of taking effect.

After decease or marriage of wife, and after youngest child has become of age, trustees to realize goodwill, stock-in-trade, furniture, and securities,

AND I DIRECT that, from and after the decease or second marriage of my said wife, and after the youngest of my children shall have attained the age of twenty-one years, the trustees or trustee for the time being of my will shall sell the goodwill of my said business, and the stock-in-trade and other things used therein, and my household furniture, plate, linen, and china, and also sell, call in, and convert into money the said stocks, funds, shares and securities, AND SHALL STAND POSSESSED of the

net proceeds of such sale and conversion as aforesaid, IN TRUST for my child, or all my children, who shall attain the age of twenty-one years or marry, and if more than one as tenants in common. PROVIDED ALWAYS that on such sale and conversion as last aforesaid my sons then living, or such one or more of them as shall be desirous of making such purchase as hereinafter mentioned, and the amount of whose shares or share in the said trust premises shall be sufficient for such purpose, shall have the option of purchasing the said goodwill of my business, and the stock-in-trade and other things used therein, for such sum of money as the said trustees or trustee may in their or his discretion consider sufficient, such sum of money to be deducted by the said trustees or trustee from the share or shares in the said trust premises of my son or sons purchasing the said goodwill, stock-in-trade, and other things as aforesaid at the time of the payment or division of the said trust premises to or amongst the person or persons entitled thereto under this my will; AND I DECLARE that the said trustees or trustee may after the death or second marriage of my said wife apply the whole or any part of the income of the share of the said trust premises to which any infant child of mine shall for the time being be contingently or absolutely entitled under this my will, whether arising from the said stocks, funds, shares and securities, or from my said business, or otherwise, for his or her maintenance and education; AND shall accumulate the unapplied income of such share by investing the same in the same manner as is hereinbefore directed with regard to the said trust

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and divide amongst children.

Sons to have option of purchasing business.

Maintenance of infant children after death or marriage of wife.

XV. moneys, for the benefit of the person who shall ultimately become entitled to the share from which such income arose, but with power to apply the accumulations of any preceding year as if the same were income of the then current year. AND I DECLARE that the said trustees or trustee may, after the death or second marriage of my said wife, or during her widowhood, with her consent in writing, raise any part not exceeding one half of the share of the said trust premises to which any infant child of mine shall for the time being be contingently or absolutely entitled under this my will, and apply the same for the advancement or benefit of such child. AND I DECLARE that the said trustees or trustee may postpone the sale and conversion of all or any part of my said real and personal estate so long as such trustees or trustee shall in their, his, or her discretion think proper; BUT that, notwithstanding any such postponement, the whole of my real estate shall be considered as converted into personalty from my decease, and shall be transmissible accordingly. AND I DECLARE that the said trustees or trustee may settle all my accounts, whether relating to my said business or otherwise, in such manner, and upon such terms, as they, he, or she shall think fit, and may submit to arbitration, or compromise and settle, all debts due or claimed to be due to or from my estate, without being answerable for any loss occasioned thereby; AND ALSO that, for the purpose of carrying on my said business as hereinbefore directed, the said trustees or trustee may employ such shopmen, clerks, and other assistants, and upon such terms,

*Advancement.

Power to postpone conversion.

Constructive conversion from death.

Power to settle accounts, employ assistants, &c.

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as they, he, or she shall in their, his, or her discretion think fit. AND ALSO that the said trustees or trustee shall be indemnified by and out of the said trust premises from all losses arising from the carrying on of my said business as aforesaid. AND I DECLARE that the power to appoint a new trustee or new trustees, in any of the events specified by the statute made in that behalf, may, in the case of the trusteeship of this my will, be exercised by my said wife during her widowhood, and after her death or marriage by the persons or person who would have such power in case no person had been hereby nominated for the purpose. IN WITNESS, &c.

Indemnity of the trustees.

As to appointments of new trustees.

A will of this kind would require considerable care in the selection of trustees. It would be necessary that they should be men possessing tact, and conversant with business in general, and it would be desirable that one of them at least should be acquainted with the testator's own trade. A large discretion is here given as to investments; and, of course, in any actual will, the draftsman would not insert a trust with so wide a choice of securities without careful consideration of the matter with the client, and express instructions from the latter. It is quite exceptional to authorize investment in bank shares; but if such an investment is to be allowed, a proviso similar to that in the precedent seems to be desirable; for it should be remembered that, in order to limit the liability of the shareholder to the capital actually invested, it is not sufficient that a company be registered as "limited," but the shares must also have been fully paid up, otherwise the holder is liable for future calls, over and above the money invested; and, in cases which sometimes occur, where this liability is two or three times the amount of the paid up capital, it is evident that, notwithstanding the "limit" of the Joint Stock Companies Act, the estate may incur very severe loss in the event of a failure. In referring to the invested fund in subsequent parts of the will, care should be taken to use either particular words which apply respectively to all the species of investments authorized,—for instance, "stocks,

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funds, shares, and securities"—or a general word which clearly includes them all, such as "investments." The word "securities" would not do, where investment is authorized both on mortgage and in stocks and shares. It might be said to refer merely to the former, and a question of construction would thus arise.

In different forms of trust, all more or less sanctioned by usage, the shares of a settled fund are made to vest in three distinct classes of children, viz. :—

Children who attain the age of twenty-one;

Children who being sons attain the age of twenty-one, or being daughters attain that age or marry;

Children, whether sons or daughters, who attain the age of twenty-one or marry.

In all these cases, those who attain their majority acquire vested interests, and the only difference relates to the marriage of minors. In the first case, a legatee, who marries, and dies under twenty-one, acquires no interest whatever, so that the wife, or husband, and children, if any, can take nothing under the Statutes of Distribution. In the second case, the sons are exactly in the same position as in the first. If they marry, and die under twenty-one, the wife and family can receive nothing; but daughters, on the other hand, acquire a vested interest by the fact of their marriage, so that, if they afterwards die under age, their husband can claim the fund, unless a settlement has been made with the leave of the Court, under Statute 18 & 19 Vict. c. 43, a course which is obviously desirable in cases where the share is large enough to justify the expense. In the third case, the sons, as well as the daughters, acquire vested interests on marriage, so that either can make a settlement by leave of the Court; or, supposing that a son married and died under age without a settlement, the wife would take one-third and the children two-thirds of the share.

Thus, the first kind of trust tends to prohibit the marriage of the legatees under age, and may operate harshly, at any rate in the case of daughters; the second admits of the marriage of infant daughters, without placing them under a disadvantage, but denies this privilege to the sons; the third treats the sons and daughters alike, and although the second is the plan most usually adopted, some may perhaps be

inclined to prefer the third, on account of the hardship of punishing the issue for the too hasty marriage of their parents, such of course being the practical effect of giving no transmissible interest to sons who marry and die under age. XV.

In the clause empowering the sons to purchase the business, certain conditions are introduced with a view to protecting the trustees against applications to allow the purchase-money to remain on security, which, having regard to the difficulty of carrying out such arrangements, and the additional trouble involved, would place the trustees in an unpleasant position.

XVI.

WILL *of a young* MAN *possessing* REAL *and* PERSONAL ESTATE. DEVISE *of a* FARM *to two for their joint* LIVES, *with* REMAINDER *to the* SURVIVOR. BEQUEST *of a* LEASEHOLD DWELLING-HOUSE *to* FATHER *for* LIFE, *then to* BROTHER. RESIDUE *of* PERSONALTY *to* FATHER. APPOINTMENT *of* FATHER *as* EXECUTOR. XVI.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., gentleman, now residing with my father, F. B., of, &c., Esq. I DEVISE all that my farm, consisting of a dwelling-house, yard, garden, farm buildings, and 160 acres of land, known as "The Uplands," situate in the parish of —— in the county of ——, and now in the occupation of ——, TO THE USE OF my friends C. D., of, &c., and E. F., of, &c., during their joint lives, in equal shares; WITH remainder TO THE USE of the survivor of them the said C. D. and E. F., in fee simple. I BEQUEATH all that my leasehold dwelling-house, called "Leamington Villa," with the garden and appurtenances, situate in —— Street, in the town

Devise of a farm to two friends for their joint lives, with remainder to the survivor.

Bequest of leasehold house to father for life, then to brother.

XVI. of ——, in the said county of ——, and all tenant's fixtures belonging to me in and about the said leasehold premises, UNTO my father the said F. B. for his life; AND after his decease, I BEQUEATH the same unto my brother G. B., as to the said leasehold premises for the remainder then unexpired of the term of years for which I now hold the same, and as to the said fixtures for his own absolute use. I BEQUEATH all other my personal estate to my father the said F. B. absolutely. AND I APPOINT my said father sole executor of this my will. IN WITNESS, &c.

Residue to father.

Father sole executor.

It is sometimes convenient to devise real estate to uses, in the form adopted above, when there are several limitations, one following the other, as the words "to the use" serve the purpose of marking the commencement of a fresh clause, and render unnecessary such longer expressions as "I devise the same," &c., and the plan is now generally adopted in most of the recognized books of precedents. At the same time, the correctness of devising to uses, without a trustee or other person to stand seised to the uses declared, is perhaps open to question; and in fact the uses, in such a case, are not executed by the statute, but have nearly the same effect as the word "to" or "unto," with this distinction, however, that whilst under a devise to A. to the use of or in trust for B., B. will take the legal estate, a devise *to the use of* A., to the use of, or in trust for B., would vest the legal estate in A.

In the case of a will containing powers of appointment, the existence or non-existence of devisees to uses may make this practical difference, viz., that, in the former case, an appointment, under any such power, to A. in trust for B., would vest the legal estate in A.; but, in the latter case, there being no seisin to serve the use in favour of A., the legal estate would vest in B. (*vide* Sugden on Powers, 8th ed., p. 196), a result different from what would necessarily be obtained on an appointment under a power in a deed, and hence tending to confuse. On this account, therefore, as well as for the sake of correctness in principle, we should recommend the older

fashion of devising to trustees or others to the uses required, in any will containing such powers. XVI.

In a bequest of leasehold property to one for life, and then over to another, it is not necessary to have trustees; for, although there can at law be no remainder of a chattel, yet, on a direct bequest and limitation over such as the above, the latter will take effect as an executory limitation; and, on the death of the first taker, the other will succeed as effectually as if the property so given had been freehold (Williams' Personal Property, 5th ed., p. 237). Where, however, minors are likely to be interested; for instance, if the limitation over had been to the children of G. B., trustees are evidently desirable, not merely to protect the interests of the parties generally as in any other case of infancy, but in particular to avoid the danger of forfeiture from the want of a person to see to the observance of the covenants in the lease.

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WILL *of a* MANUFACTURER. DEVISE *of* REAL ESTATE *to* ELDEST SON, *charged, as to part, with an* ANNUITY *to* WIFE. FURNITURE, *&c., to* WIFE. *Contingent* LEGACY *to* YOUNGER SON. *General* PERSONAL ESTATE *to* TRUSTEES. TRUST *to get in* DEBTS. *Pay* TESTATOR'S DEBTS, *&c., out of general* PERSONAL ESTATE. *Invest* RESIDUE *of* MONEYS *called in.* TRUSTEES *to join with* TESTATOR'S PARTNERS *in carrying on* BUSINESS, *until* YOUNGER SON TWENTY-ONE; *when share of* BUSINESS *to be transferred to him.* WIFE *to receive additional* ANNUITY *out of* BUSINESS, *or* (*in case* BUSINESS *discontinued*) *by* PURCHASE *from* GOVERNMENT. RESIDUE *of* PER-

XVII. SONALTY *to* DAUGHTER; BUT *on her* DEATH *under* TWENTY-ONE, *then to the two* SONS. PROVISIONS *for* MAINTENANCE.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of, &c. I DEVISE my messuage and farm called ——, situate at ——, in the parish of ——, in the county of ——, and all other real estate vested in me beneficially, UNTO my son C. B. in fee simple, charged, as to the said messuage and farm called ——, with the payment to my wife D. B. of the yearly sum of £—— during her life, to be paid by half-yearly payments (of equal amount except as hereinafter mentioned) on the —— day of —— and the —— day of ——; And the first payment to be made on such of the said days of payment as shall occur next after my death; such first payment to be a part of an equal half-yearly payment proportionate to the part of a half year which shall have elapsed from my death to such first day of payment. I APPOINT my friends E. F., of, &c., and G. H., of, &c., trustees and executors of my will. I APPOINT my said wife, during her life, and after her decease the said E. F. and G. H. guardian and guardians of such of my children as shall be under the age of twenty-one years at my decease. I BEQUEATH my household furniture, plate, linen, china, pictures, statues, and articles of vertu, prints, engravings, books, and other household effects, UNTO my said wife for her own use and benefit. I BEQUEATH the legacy of £—— to my son J. B. it he shall attain the age of twenty-one years, but without interest in the meanwhile. I BEQUEATH my one-third share or interest in the paper manufacturing

Devise of real estate to son,

charged, as to part, with an annuity to wife.

Appointment of trustees, executors, and guardian.

Bequest of household furniture and effects to wife.

Contingent legacy to son.

Bequest of share of business,

business carried on by myself and my co-partners W. S. and J. R. at —— aforesaid, under the name of "Smith, Brown and Robinson," and in the machinery, implements, plant, stock-in-trade and other effects which shall be used or employed in the said business at my decease, and in the book and other debts which shall then be owing to me and my co-partners on account of the said business, and all my money, securities for money, stocks, shares, and all other my personal estate not hereinbefore bequeathed, UNTO the said E. F. and G. H. their executors and administrators, UPON TRUST to dispose of the same according to the directions hereinafter contained. I DIRECT the said E. F. and G. H., or other the trustees or trustee for the time being of my will, as soon after my decease as the arrangements of the said business will conveniently allow, to get in and realize the balance which shall be found to be due to my estate on account of my share of the debts which at my decease shall be owing to me and my co-partners on account of the said business, after deducting from the amount of such debts the working expenses of the said business and other claims and demands due therefrom up to the date of my death; AND all other moneys owing to me on account of the said business; AND ALSO, as soon as conveniently may be after my decease, to call in and realize all debts which shall then be owing to myself alone, other than debts secured by mortgage of freehold property; AND out of the moneys so realized as aforesaid, and the ready money, stocks and shares belonging to me at my decease, or any one or more of such funds as

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and residue of personal estate to the trustees.

Trustees to get in business and other debts, except sums secured by mortgage of freeholds;

and out of proceeds, or ready money, stocks, and

XVII. aforesaid, to pay the debts which shall be owing by me at my decease, and my funeral and testamentary expenses, and to invest the moneys so realized as aforesaid, or the residue thereof, in any of the public funds, or Government securities of the United Kingdom, or upon the security of freehold property in England or Wales, with power from time to time to vary or transpose the stocks and securities so purchased for any others of the kinds hereby authorized. AND I DIRECT the said trustees or trustee to join with my co-partners, or such one of them as shall for the time being be living, and the persons for the time being representing such of my co-partners as shall have died, in carrying on the said business, so long as my son J. B. shall be under the age of twenty-one years: AND I DIRECT the said trustees or trustee, by and out of the net profits of my aforesaid share of the said business, to pay to my said wife the yearly sum of £——, in addition to the said yearly sum of £—— hereinbefore charged upon the said messuage and farm called ——; the said sum of £—— to be paid on the —— day of —— in each year, the first payment to be made on the —— day of —— which shall happen next after my death; such first payment to be a part of the said sum of £—— proportionate to the part of a year which shall have elapsed from my death to such first day of payment. AND I DIRECT the said trustees or trustee to apply the whole, or such part as they or he shall think fit, of the residue of the net profits of my aforesaid share of the said business, for the maintenance and education, or otherwise for the benefit, of my said son J. B., so long as he shall be

shares, to pay testator's debts, funeral, and testamentary expenses; and invest proceeds, or the residue thereof.

Trustees to join in carrying on business whilst son J. B. under age,

And pay wife an additional annuity out of profits,

And apply whole or part of residue of profits for maintenance, &c., of J. B.

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under the age of twenty-one years, AND I DIRECT that, when and so soon as my said son J. B. shall have attained the said age of twenty-one years, then the said trustees or trustee shall pay the unapplied portion of the said net profits to the said J. B., and shall also transfer to the said J. B. my said share or interest in the said business, and in the machinery, implements, plant, stock in trade, and other effects which shall be then used or employed therein, and in the book and other debts then owing to the said firm of Smith, Brown and Robinson. AND I DIRECT that, so long as the said J. B. shall be a member of the said firm, he the said J. B. shall continue the payment to my said wife of the said yearly sum of £——, on the date aforesaid in each year, out of the net profits of the said share of the said business. PROVIDED ALWAYS, and I direct that, in case the said J. B. shall, within one calendar month after he shall have attained the age of twenty-one years, give notice in writing to the trustees or trustee for the time being of my will that he is not desirous of taking to my said share in the said business, then the said trustees or trustee shall, as soon as conveniently may be after their receiving such notice as aforesaid, sell and dispose of my said share in the said business, and in the said machinery and other effects used or employed therein, according to the terms of the deed of partnership between me and the said W. S. and J. R.; AND shall, out of the net proceeds of such sale, purchase in the names or name of them or him the said trustees or trustee, from the Commissioners for the Reduction of the National Debt, an annuity of £—— for the life of my said wife,

On J. B. attaining twenty-one, trustees to pay balance of profits, and transfer share of business to him;

he continuing to pay the wife's second annuity.

In case J. B. does not wish to take to share of business, trustees to sell same, purchase a Government annuity for wife, and pay residue of proceeds to J. B.

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and shall pay such annuity to my said wife for her separate use; and shall pay the residue of the net proceeds of sale of my said share in the said business, machinery and other effects, to the said J. B. PROVIDED ALSO, and I direct, that in case the said J. B., having taken to my said share in the said business, shall at any time afterwards, during the life of my said wife, relinquish the said share in the said business, then he the said J. B. shall immediately thereupon purchase, in the names or name of the said trustees or trustee from the said Commissioners, the like annuity as last hereinbefore mentioned, and which shall be applied by the said trustees or trustee in the same manner as the said last-mentioned annuity. AND I DIRECT the said trustees or trustee to pay and transfer the residue of my personal estate, including the stocks or securities in or upon which any part of my personal estate shall have been invested pursuant to the direction in that behalf hereinbefore contained, UNTO my said daughter K. B., if and when she shall attain the age of twenty-one years; BUT if the said K. B. shall not live to attain the said age, then, I DIRECT the said trustees or trustee to pay and transfer the said residue of my personal estate, UNTO my said sons C. B. and J. B. in equal shares; AS TO the share of the said C. B. as soon as conveniently may be after my decease, and as to the share of the said J. B., on his attaining the age of twenty-one years. But in case the said J. B. shall not live to attain the said age, THEN the share of the said J. B. in the said residue of my personal estate shall go and belong to the said C. B. AND I DIRECT that the said trustees

And if J. B. takes to, and afterwards relinquishes the share of business in wife's lifetime, he is to purchase an annuity for her of like amount.

Residue of personalty to be transferred to daughter on her attaining twenty-one;

But if she does not attain that age, then to the two sons; with gift over of J. B.'s share in case of his death under twenty-one.

Maintenance, &c.,

or trustee may apply such portion as they or he shall think fit of the income of the said residue of my personal estate for the maintenance, education, advancement, or otherwise for the benefit, of the said K. B. so long as she shall be under the age of twenty-one years; AND FURTHER that, during the life of my said wife, the said trustees or trustee may either themselves or himself so apply such portion of the said income, or may pay the same to my said wife to be so applied by her; AND for the due application thereof by my said wife the said trustees or trustee shall not be responsible. AND hereby revoking all former wills made by me, I DECLARE this to be my last will and testament. IN WITNESS, &c.

XVII. of daughter.

Revocation clause.

As to the above form of limiting a rent-charge being sufficient, see Smith's Real and Personal Property, 3rd ed., p. 20. The power of distress usually given is not really necessary, being supplied by the statute 4 Geo. II., c. 28, in cases of rents-seck, that is to say rents for the recovery of which no power of distress is given either by the rules of the common law or the instruments creating them; so that, although legal text-books still enlarge on the difference between a rent-charge and a rent-seck, the only distinction, if such it can be called, is that in the one case the grantee or devisee has a power of distress by the terms of the instrument, and in the other case, by statute. The Conveyancing Act of 1881 also supplies a power of distress where the rent-charge is twenty-one days in arrear, and powers to enter and to limit a term where forty days in arrear, but so far only as those remedies might have been conferred by the instrument under which the annual sum arises—a qualification which should be borne in mind if it be intended to rely on the statute when limiting a rent-charge under a power. Annuities, like other periodical payments, are now apportionable under the provisions of the Apportionment Act, 1877; so that it is also unnecessary to expressly provide for apportionment for the fraction of a year or half-year immediately preceding the

XVII. annuitant's death. In some cases, it would be most convenient to make the first half-yearly payment due six months after the testator's death; as the question of apportionment is thus simplified, the same having to be reckoned only from the last day of payment to the death of the annuitant. But where the annuity is charged on land, it may be convenient to have regard to the days when the entire rent of the property is paid; and, if fixed dates are given, we should recommend that, as in the precedent, the first payment should be directed to be an apportioned payment only, according to the period which will then have elapsed since the testator's death; because then, on the annuitant's death, it is only necessary to apportion for the last fraction of a half-year as in the other case, and not also to take into consideration the excess of income which the annuitant may have received, owing to the payment of a full half-yearly instalment less than six months from the death of the testator. An annuity payable out of the profits of a business would most conveniently be paid yearly, for obvious reasons; and the question of the most suitable day would depend upon the arrangements of the business.

It must be borne in mind that, as a partnership is dissolved by death, a partner can only bequeath his share where power to do so is expressly given by the deed of partnership, and then only subject to and in accordance with the provisions of the deed; the exercise of any such power operating in fact as a direction to the parties to enter into a fresh partnership, rather than as the continuance of the original one. The deed should therefore be carefully examined before any such disposition of the testator's share as that contained above is attempted to be carried out.

SPECIAL FORMS OF ATTESTATION.

Special Forms.

In the Case of Alterations.

To the usual form of attestation, make the following addition:—"The following alterations having been previously made; namely, in the second page, the interlineation of the words 'of the' over the twenty-first line; and in the third page the substitution of the word 'acceleration' for 'accident' in the tenth line, and the crossing out of the word 'aforesaid' in the fifteenth line;" *or* "the word 'Christopher,' over the tenth line of the first page, and the word 'proceeding' over the twenty-fifth line of the second page, having first been interlined;" *or* "the alterations, opposite to which we have written our initials in the margin, having been first made."

NOTE.—The use of one of the above forms has this advantage—viz., that it is not necessary to trouble the testator for more than one signature. The first two are the safest, and are most generally used. If the alterations are not noticed in the attestation, the testator, as well as the witnesses, should write his initials in the margin opposite, otherwise an affidavit will be necessary to prove that the alterations were made before execution.

Where the Testator makes his Mark.

The above-written will was, in our presence, read over to the said testator, A. B., who appeared per-

Special Forms.

fectly to understand the same; and the said A. B. afterwards, in our presence, made his mark to the said will, and acknowledged it to be his last will and testament: and we did thereupon, at the request of the said A. B., in his presence, and in the presence of each other, hereunto subscribe our names as witnesses.

Where another Person signs by Testator's direction.

Conclude the will as follows:—"In witness whereof, E. F., of, &c., has, in my presence and by my direction, hereunto signed my name, this —— day of ——, 18—."

And use the following attestation clause:—

"We, the undersigned, were both present at the same time, on the above date, when the above will was read over to the said testator, A. B.—he appearing perfectly to understand the same—and was afterwards signed with the name of the said testator by the said E. F. on the said testator's behalf, in his the said testator's [sight and] presence, and by his direction, and acknowledged by the said testator as his last will and testament: and we, at the request of the said testator, in his [sight and] presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

NOTE.—In the case of a blind testator, omit the words between brackets.

APPENDIX.

1 Vict. c. 26.

An Act for the Amendment of the Laws with respect to Wills. [3rd July, 1837.]

1 Vict. c. 26.

Meaning of certain words in this Act:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; (that is to say,) the word "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of an Act passed in the twelfth year of the reign of King Charles the Second, intituled An Act for taking away the Court of Wards and Liveries, and Tenures in capite and by Knights Service and Purveyance, and for settling a Revenue upon His Majesty in lieu thereof, or by virtue of an Act passed in the Parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled An Act for taking away the Court of Wards and Liveries and Tenures in capite and by Knights Service, and to any other testamentary disposition; and the words "real estate" shall extend to manors, advowsons, messuages, lands, tithes, rents and hereditaments, whether freehold, customary freehold, tenant right, customary or

"Will;"

12 Car. II. c. 24.

"Real estate;"

1 Vict. c. 26.

copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and the words "personal estate" shall extend to leasehold estates and other chattels real, and also to monies, shares of Government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

"Personal estate;"

Number;

Gender.

Repeal of the Statutes of Wills, 32 Hen. VIII. c. 1, and 34 & 35 Hen. VIII. c. 5.

10 Car. I. Sess. 2, c. 2. (I.)

Secs. 5, 6, 12, 19, 20, 21, Statute of Frauds, 29 Car. II. c. 3; 7 Will. III. c. 12 (I.).

Sec. 14 of 4 & 5 Anne, c. 13.

2. And be it further enacted, that an Act passed in the thirty-second year of the reign of King Henry the Eighth, intituled The Act of Wills, Wards, and Primer Seisins, whereby a man may devise Two Parts of his Land; and also an Act passed in the thirty-fourth and thirty-fifth years of the reign of the said King Henry the Eighth, intituled The Bill concerning the Explanation of Wills; and also an Act passed in the Parliament of Ireland in the tenth year of the reign of King Charles the First, intituled An Act how Lands, Tenements, &c., may be disposed by Will or otherwise, and concerning Wards and Primer Seisins; and also so much of an Act passed in the twenty-ninth year of the reign of King Charles the Second, intituled An Act for Prevention of Frauds and Perjuries, and of an Act passed in the Parliament of Ireland in the seventh year of the reign of King William the Third, intituled An Act for Prevention of Frauds and Perjuries, as relates to devises or bequests of lands or tenements or to the revocation or alteration of any devise in writing of any lands, tenements, or hereditaments, or any clause thereof, or to the devise of any estate *pur autre vie*, or to any such estate, being assets, or to nuncupative wills, or to the repeal, altering, or changing of any will in writing concerning any goods or chattels or personal estate, or any clause, devise, or bequest therein; and also so much of an Act passed in the fourth and fifth years of the reign of Queen Anne, intituled An Act for the Amendment of the Law and the better Advancement of Justice, and of

an Act passed in the Parliament of Ireland in the sixth year of the reign of Queen Anne, intituled An Act for the Amendment of the Law and the better Advancement of Justice as relates to Witnesses to Nuncupative Wills; and as also so much of an Act passed in the fourteenth year of the reign of King George the Second, intituled An Act to amend the Law concerning Common Recoveries and to explain and amend an Act made in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for Prevention of Frauds and Perjuries," as relates to estates *pur autre vie*; and also an Act passed in the twenty-fifth year of the reign of King George the Second, intituled An Act for avoiding and putting an end to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning Real Estates in that Part of Great Britain called England, and in his Majesty's Colonies and Plantations in America, except so far as relates to his Majesty's colonies and plantations in America; and also an Act passed in the Parliament of Ireland in the same twenty-fifth year of the reign of King George the Second, intituled An Act for the avoiding and putting an end to certain Doubts and Questions relating to the Attestations of Wills and Codicils concerning Real Estates; and also an Act passed in the fifty-fifth year of the reign of King George the Third, intituled An Act to remove certain Difficulties in the Disposition of Copyhold Estates by Will, shall be and the same are hereby repealed, except so far as the same Acts or any of them respectively relate to any wills or estates *pur autre vie* to which this Act does not extend.

1 Vict. c. 26.

6 Anne, c. 10 (I.).

Sec. 9 of 14 Geo. II. c. 20.

25 Geo. II. c. 6 (except as to colonies).

25 Geo. II. c. 11 (I.).

55 Geo. III. c. 192.

3. And be it further enacted, that it shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir at law or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator; and that the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the

All property may be disposed of by will,

comprising customary freeholds and copyholds with-

1 Vict. c. 26.

use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will if this Act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this Act, if this Act had not been made; and also to estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament; and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will: and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estates, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

out surrender and before admittance, and also such of them as cannot now be devised;

Estates *pur autre vie;*

contingent interests;

rights of entry; and property acquired after execution of the will.

4. Provided always, and be it further enacted, that where any real estate of the nature of customary freehold or tenant right, or customary or copyhold, might, by the custom of the manor of which the same is holden, have been surrendered to the use of a will, and the testator shall not have surrendered the same to the use of his will, no person entitled or claiming to be entitled thereto by virtue of such will shall be entitled to be admitted, except upon payment of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of the surrendering of such real estate to the use of the will, or in respect of presenting, registering, or enrolling such surrender, if the same

As to the fees and fines payable by devisees of customary and copyhold estates.

real estate had been surrendered to the use of the will of such testator: Provided also, that where the testator was entitled to have been admitted to such real estate, and might, if he had been admitted thereto, have surrendered the same to the use of his will, and shall not have been admitted thereto, no person entitled or claiming to be entitled to such real estate in consequence of such will shall be entitled to be admitted to the same real estate by virtue thereof, except on payment of all such stamp duties, fees, fine, and sums of money as would have been lawfully due and payable in respect of the admittance of such testator to such real estate, and also of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of surrendering such real estate to the use of the will, or of presenting, registering, or enrolling such surrender, had the testator been duly admitted to such real estate, and afterwards surrendered the same to the use of his will; all which stamp duties, fees, fine, or sums of money due as aforesaid shall be paid in addition to the stamp duties, fees, fine, or sums of money due or payable on the admittance of such person so entitled or claiming to be entitled to the same real estate as aforesaid. 1 Vict. c. 26.

Wills or extracts of wills of customary freeholds and copyholds to be entered on the Court rolls;

5. And be it further enacted, that when any real estate of the nature of customary freehold or tenant right, or customary or copyhold, shall be disposed of by will, the lord of the manor or reputed manor of which such real estate is holden, or his steward, or the deputy of such steward, shall cause the will by which such dispositions shall be made, or so much thereof as shall contain the disposition of such real estate, to be entered on the court rolls of such manor or reputed manor; and when any trusts are declared by the will of such real estate, it shall not be necessary to enter the declaration of such trusts, but it shall be sufficient to state in the entry on the court rolls that such real estate is subject to the trusts declared by such will; and when any such real estate could not have been disposed of by will if this Act had not been made, the same fine, heriot, dues, duties, and services shall be paid and rendered by the devisee as would have been due from the customary heir in case of the descent of the same real estate, and the lord shall, as against the devisee of such estate, have the same remedy for recover-

and the lord to be entitled to the same fine, &c., when such estates are not now devisable

1 Vict. c. 26.

ing and enforcing such fine, heriot, dues, duties, and services as he is now entitled to for recovering and enforcing the same from or against the customary heir in case of a descent.

as he would have been from the heir in case of descent.

Estates *pur autre vie.*

6. And be it further enacted, that if no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this Act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

No will of an infant valid;

7. And be it further enacted, that no will made by any person under the age of twenty-one years shall be valid.

nor of a feme covert with exception.

8. Provided also, and be it further enacted that no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this Act.*

Mode of execution.

9. And be it further enacted, that no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say,) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Appointments.

10. And be it further enacted, that no appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required; and

* But see "Married Women's Property Act," 1882, *infra*.

every will executed in manner hereinbefore required, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity. 1 Vict. c. 26.

Soldiers and marines.

11. Provided always, and be it further enacted, that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.

Seamen and marines

12. And be it further enacted, that this Act shall not prejudice or affect any of the provisions contained in an Act passed in the eleventh year of the reign of his Majesty King George the Fourth and the first year of the reign of his late Majesty King William the Fourth, intituled An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy, respecting the wills of petty officers and seamen in the Royal Navy, and non-commissioned officers of Marines, and Marines, so far as relates to their wages, pay, prize-money, bounty money, and allowances, or other monies payable in respect of services in Her Majesty's Navy.

Publication not to be requisite.

13. And be it further enacted, that every will executed in manner hereinbefore required shall be valid without any other publication thereof.

As to attesting witnesses.

14. And be it further enacted, that if any person who shall attest the execution of a will shall at the time of the execution thereof or any time afterwards be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

Gifts to an attesting witness to be void.

15. And be it further enacted, that if any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attest-

1 Vict. c. 26.

ing shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

Creditor attesting to be admitted a witness.

16. And be it further enacted, that in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Executor to be admitted a witness.

17. And be it further enacted, that no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

Will to be revoked by marriage.

18. And be it further enacted, that every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin, under the Statute of Distributions).

No will to be revoked by presumption.

19. And be it further enacted, that no will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances.

No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction.

20. And be it further enacted, that no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

No alteration in a will shall have any effect unless

21. And be it further enacted, that no obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution

1 Vict. c. 23.

of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

executed as a will.

22. And be it further enacted, that no will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

No will revoked to be revived otherwise than by re-execution or a codicil to revive it.

23. And be it further enacted, that no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

A devise not to be rendered inoperative by any subsequent conveyance or act.

24. And be it further enacted, that every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

Will to speak from death.

25. And be it further enacted, that, unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

A residuary devise shall include estates comprised in lapsed and void devises.

26. And be it further enacted, that a devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or other-

A general devise of the testator's lands

1 Vict. c. 26.

wise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary, copyhold, and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

shall include copyhold and leasehold as well as freehold lands.

A general gift shall include estates over which the testator has a general power of appointment.

27. And be it further enacted, that a general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

A devise without any words of limitation shall be construed to pass the fee.

28. And be it further enacted, that where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

The words "die without issue," or "die without leaving issue," shall be construed

29. And be it further enacted, that in any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear

1 Vict. c. 26.

by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise: Provided, that this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

to mean die without issue living at the death.

30. And be it further enacted, that where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

A devise to trustees or executors shall (with stated exceptions) pass testator's whole interest.

31. And be it further enacted, that where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

Trustees under an unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life, to take the fee.

32. And be it further enacted, that where any person to whom any real estate shall be devised for an estate tail or an estate in quasi entail shall die in the lifetime of the testator leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Devises of estates tail shall not lapse in certain cases.

33. And be it further enacted, that where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any

Gifts to children or other issue who leave

1 Vict. c. 26.

estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

issue living at the testator's death shall not lapse.

34. And be it further enacted, that this Act shall not extend to any will made before the first day of January one thousand eight hundred and thirty-eight, and that every will re-executed or republished, or revived by any codicil, shall for the purposes of this Act be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived; and that this Act shall not extend to any estate *pur autre vie* of any person who shall die before the first day of January one thousand eight hundred and thirty-eight.

Act not to extend to wills made before 1838, nor to estates *pur autre vie* of persons who die before 1838.

35. And be it further enacted, that this Act shall not extend to Scotland.

Act not to extend to Scotland.

36. And be it enacted, that this Act may be amended, altered, or repealed by any Act or Acts to be passed in this present session of Parliament.

Act may be altered this session.

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15 Vict. c. 24.

15 Vict. c. 24.

An Act for the Amendment of an Act passed in the first year of the reign of her Majesty Queen Victoria, intituled An Act for the Amendment of the Laws with respect to Wills.

[17th June, 1852.]

Whereas the laws with respect to the execution of wills require further amendment: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same (as follows):

15 Vict. c. 24.

1. Where by an Act passed in the first year of the reign of her Majesty Queen Victoria, intituled An Act for the Amendment of the Laws with respect to Wills, it is enacted, that no will shall be valid unless it shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction: Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this Act, if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said Act or this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

When signature to a will shall be deemed valid.

2. The provisions of this Act shall extend and be applied to every will already made, where administration or probate has not already been granted or ordered by a Court of com-

Act to extend to certain

15 Vict. c. 24.

wills already made.

petent jurisdiction in consequence of the defective execution of such will, or where the property, not being within the jurisdiction of the Ecclesiastical Courts, has not been possessed or enjoyed by some person or persons claiming to be entitled thereto in consequence of the defective execution of such will, or the right thereto shall not have been decided to be in some other person or persons than the persons claiming under the will, by a Court of competent jurisdiction, in consequence of the defective execution of such will.

Interpretation of "will."

3. The word "will" shall in the construction of this Act be interpreted in like manner as the same is directed to be interpreted under the provisions in this behalf contained in the said Act of the first year of the reign of her Majesty Queen Victoria.

Short title of Act.

4. This Act may be cited as "The Wills Act Amendment Act, 1852."

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24 & 25 Vict. c. 114.

24 & 25 Vict. c. 114.

An Act to amend the Law with respect to Wills of Personal Estate made by British Subjects. [6th August, 1861.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Wills made out of the Kingdom to be admitted if made according to the law of the place where made.

1. Every will and other testamentary instrument made out of the United Kingdom by a British subject (whatever may be the domicile of such person at the time of making the same or at the time of his or her death) shall as regards personal estate be held to be well executed for the purpose of being admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be made according to the forms required either by the law of the place where the same was made or by the law of the place where such person was domiciled when the same was made, or by the laws then

24 & 25 Vict. c. 114.

in force in that part of her Majesty's dominions where he had his domicile of origin.

Wills made in the Kingdom to be admitted if made according to local usage.

2. Every will and other testamentary instrument made within the United Kingdom by any British subject (whatever may be the domicile of such person at the time of making the same or at the time of his or her death) shall as regards personal estate be held to be well executed, and shall be admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be executed according to the forms required by the laws for the time being in force in that part of the United Kingdom where the same is made.

Change of domicile not to invalidate will.

3. No will or other testamentary instrument shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same.

Nothing in this Act to invalidate wills otherwise made.

4. Nothing in this Act contained shall invalidate any will or other testamentary instrument as regards personal estate, which would have been valid if this Act had not been passed, except as such will or other testamentary instrument may be revoked or altered by any subsequent will or testamentary instrument made valid by this Act.

Extent of Act.

5. This Act shall extend only to wills and other testamentary instruments made by persons who die after the passing of this Act.

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24 & 25 Vict. c. 121.

24 & 25 Vict. c. 121

An Act to amend the Law in relation to the Wills and Domicile of British *Subjects dying whilst resident abroad, and of Foreign Subjects dying whilst resident within Her Majesty's Dominions.* [6th August, 1861.]

Whereas by reason of the present law of domicile the wills of British subjects dying whilst resident abroad are often defeated, and their personal property administered in a manner contrary to their expectations and belief; and it is desirable to amend such law, but the same cannot be effectually done

24 & 25 Vict. c. 121.

without the consent and concurrence of foreign states: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

After convention no British subject dying abroad to be deemed to have acquired domicile unless resident for one year, &c., and for purposes of succession shall retain domicile possessed at time of going to reside.

1. Whenever Her Majesty shall by convention with any foreign state agree that provisions to the effect of the enactments herein contained shall be applicable to the subjects of Her Majesty and of such foreign state respectively, it shall be lawful for Her Majesty by any order in council to direct, and it is hereby enacted, that from and after the publication of such order in the *London Gazette* no British subject resident at the time of his or her death in the foreign country named in such order shall be deemed under any circumstances to have acquired a domicile in such country unless such British subject shall have been resident in such country for one year immediately preceding his or her decease, and shall also have made and deposited in a public office of such foreign country (such office to be named in the order in council) a declaration in writing of his or her intention to become domiciled in such foreign country; and every British subject dying resident in such foreign country, but without having so resided and made such declaration as aforesaid, shall be deemed for all purposes of testate or intestate succession as to moveables to retain the domicile he or she possessed at the time of his or her going to reside in such foreign country as aforesaid.

And no foreign subject dying in Great Britain or Ireland to be deemed to have acquired domicile unless resident for one year, &c.

2. After any such convention as aforesaid shall have been entered into by Her Majesty with any foreign state it shall be lawful for Her Majesty by order in council to direct, and from and after the publication of such order in the *London Gazette* it shall be and is hereby enacted, that no subject of any such foreign country who at the time of his or her death shall be resident in any part of Great Britain or Ireland shall be deemed under any circumstances to have acquired a domicile therein, unless such foreign subject shall have been resident within Great Britain or Ireland for one year immediately preceding his or her decease, and shall also have signed, and deposited with Her Majesty's Secretary of State for the Home Department a declaration in writing of his or her desire to become and be domiciled in England, Scotland, or Ireland,

and that the law of the place of such domicile shall regulate his or her moveable succession. 24 & 25 Vict. c. 121.

3. This Act shall not apply to any foreigners who may have obtained letters of naturalization in any part of Her Majesty's dominions. Exception.

4. Whenever a convention shall be made between Her Majesty and any foreign state, whereby Her Majesty's consuls or vice-consuls in such foreign state shall receive the same or the like powers and authorities as are hereinafter expressed, it shall be lawful for Her Majesty by order in council to direct, and from and after the publication of such order in the *London Gazette* it shall be and is hereby enacted, that whenever any subject of such foreign state shall die within the dominions of Her Majesty, and there shall be no person present at the time of such death who shall be rightfully entitled to administer to the estate of such deceased person, it shall be lawful for the consul, vice-consul, or consular agent of such foreign state within that part of Her Majesty's dominions where such foreign subject shall die, to take possession and have the custody of the personal property of the deceased, and to apply the same in payment of his or her debts and funeral expenses, and to retain the surplus for the benefit of the persons entitled thereto; but such consul, vice-consul, or consular agent shall immediately apply for and shall be entitled to obtain from the proper Court letters of administration of the effects of such deceased person, limited in such manner and for such time as to such Court shall seem fit. When subjects of foreign states shall die in Her Majesty's dominions, and there shall be no person to administer to their estates, the consuls of such foreign states may administer.

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22 & 23 Vict. c. 35.

An Act to further amend the Law of Property and to relieve Trustees. [August 13th, 1859.] 22 & 23 Vict. c. 35.

23. The *bonâ fide* payment to and the receipt of any person to whom any purchase or mortgage money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the Trustees' receipts.

22 & 23 Vict. c. 35.

application or being answerable for the misapplication thereof unless the contrary shall be expressly declared by the instrument creating the trust or security.

Every trust instrument to be deemed to contain clauses for the indemnity and reimbursement of the trustees.

31. Every deed, will, or other instrument creating a trust either expressly or by implication shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following; that is to say, "That the trustees or trustee for the time being of the said deed, will, or other instrument shall be respectively chargeable only for such monies, stocks, funds, and securities as they shall respectively actually receive notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust monies or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument."

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40 & 41 Vict. c. 33.

40 & 41 Vict. c. 33.

An Act to amend the Law as to Contingent Remainders.
[2nd August, 1877.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Cases in which con-

1. Every contingent remainder created by any instrument executed after the passing of this Act, or by any will or

codicil revived or republished by any will or codicil executed after that date, in tenements or hereditaments of any tenure, which would have been valid as a springing or shifting use or executory devise or other limitation had it not had a sufficient estate to support it as a contingent remainder, shall, in the event of the particular estate determining before the contingent remainder vests, be capable of taking effect in all respects as if the contingent remainder had originally been created as a springing or shifting use or executory devise or other executory limitation.

40 & 41 Vict. c. 33.

tingent remainders capable of taking effect.

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44 & 45 Vict. c. 41.

Conveyancing and Law of Property Act, 1881.
[22nd August, 1881.]

44 & 45 Vict. c. 41.

I.—Preliminary.

1.—(1.) This Act may be cited as the Conveyancing and Law of Property Act, 1881.

Short title;

(2.) This Act shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-one.

commencement;

(3.) This Act does not extend to Scotland.

extent.

2. In this Act—

(xiii.) Instrument includes deed, will, inclosure, award, and Act of Parliament.

Trust and Mortgage Estates on Death.

30.—(1.) Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like

Devolution of trust and mortgage estates on death.

44 & 45 Vict. c. 41.

manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and, for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

(2.) Section four of the Vendor and Purchaser Act, 1874, and section forty-eight of the Land Transfer Act, 1875, are hereby repealed.

(3.) This section, including the repeals therein, applies only in cases of death after the commencement of this Act.

VII.—Trustees and Executors.

Appointment of new trustees, vesting of trust property, &c.

31.—(1.) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit, or being incapable, as aforesaid.

(2.) On an appointment of a new trustee, the number of trustees may be increased.

(3.) On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only

one trustee was originally appointed, or to fill up the original number of trustees, where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(5.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(8.) This section applies to trusts created either before or after the commencement of this Act.

Retirement of trustee.

32.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as a contrary

44 & 45 Vict. c. 41.

intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Act.

Power for trustees for sale to sell by auction, &c.

35.—(1.) Where a trust for sale or a power of sale of property is vested in trustees, they may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title, or other matter, as the trustees think fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Act.

Trustees' receipts.

36.—(1.) The receipt in writing of any trustees or trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2.) This section applies to trusts created either before or after the commencement of this Act.

Power for executors and trustees to compound, &c.

37.—(1.) An executor may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) An executor, or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may

compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith. 44 & 45 Vict. c. 41.

(3.) As regards trustees, this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies to executorships and trusts constituted or created either before or after the commencement of this Act.

Powers to two or more executors or trustees.

38.—(1.) Where a power or trust is given to or vested in two or more executors or trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2.) This section applies only to executorships and trusts constituted after or created by instruments coming into operation after the commencement of this Act.

VIII.—Married Women.

Power for Court to bind interest of married woman.

39.—(1.) Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property.

(2.) This section applies only to judgments or orders made after the commencement of this Act.

IX.—Infants.

Management of

42.*—(1.) If and as long as any person who would but for

* It is doubtful whether this section applies to Wills. (See "Introduction," page 13.)

44 & 45 Vict. c. 41.

land and receipt and application of income during minority.

this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course of sale, or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses, and other buildings and erections, and to continue the working of mines, minerals, and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

(3.) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance,

education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes. 44 & 45 Vict. c. 41.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, with power to vary investments; and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

(i.) If the infant attains the age of twenty-one years, then in trust for the infant;

(ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge; but

(iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate;

but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

44 & 45 Vict. c. 41.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this Act.

Application by trustees of income of property of infant for maintenance, &c.

43.—(1.) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Act.

X.—Rentcharges and other Annual Sums.

Remedies for recovery of

44.—(1.) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the

land or on the income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

annual sums charged on land.

(2.) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

(3.) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

(4.) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof,

44 & 45 Vict. c. 41.

or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6.) This section applies only where that instrument comes into operation after the commencement of this Act.

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45 & 46 Vict. c. 38.

45 & 46 Vict. c. 38.

The Settled Land Act, 1882.

I.—Preliminary.

Commencement;

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

extent.

(3.) This Act does not extend to Scotland.

II. Definitions.

Definition of settlement, tenant for life, &c.

2.—(1.) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments

any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires. 45 & 46 Vict. c. 38.

(3.) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

"Trustees of the settlement."

(8.) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

III.—Sale; Enfranchisement; Exchange; Partition.

General Powers and Regulations.

Powers to tenant for life to sell, &c.

3. A tenant for life—

(i.) May sell the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same; and

(ii.) Where the settlement comprises a manor,—may sell the seigniory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land, parcel of the manor, with or without any exception or reservation of all or any mines or minerals, or of any rights or powers relative to mining purposes, so as in every such case to effect an enfranchisement; and

(iii.) May make an exchange of the settled land, or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and

(iv.) Where the settlement comprises an undivided share in land, or, under the settlement, the settled land

45 & 46 Vict. c. 38.

has come to be held in undivided shares,—may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

Regulations respecting sale, enfranchisement, exchange and partition.

4.—(1.) Every sale shall be made at the best price that can reasonably be obtained.

(2.) Every exchange and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.

(3.) A sale may be made in one lot or in several lots, and either by auction or by private contract.

(4.) On a sale the tenant for life may fix reserve biddings and buy in at an auction.

(5.) A sale, exchange, or partition may be made subject to any stipulations respecting title, or evidence of title, or other things.

(6.) On a sale, exchange, or partition, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed or reserved and made binding, as far as the law permits, by covenant, condition, or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.

(7.) An enfranchisement may be made with or without a re-grant of any right of common or other right, easement, or privilege theretofore appendant or appurtenant to or held or enjoyed with the land enfranchised, or reputed so to be.

(8.) Settled land in England shall not be given in exchange for land out of England.

IV.—Leases.

General Powers and Regulations.

Power for tenant for life to

6. A tenant for life may lease the settled land, or any part thereof, or any easement, right, or privilege of any

45 & 46 Vict. c. 38.

kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding—

(i.) In case of a building lease, ninety-nine years :

(ii.) In case of a mining lease, sixty years :

(iii.) In case of any other lease, twenty-one years.

lease for ordinary or building or mining purposes.

7.—(1.) Every lease shall be by deed, and be made to take effect in possession not later than twelve months after its date.

Regulations respecting leases generally.

(2.) Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.

(3.) Every lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(4.) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life ; of which execution and delivery the execution of the lease by the tenant for life shall be sufficient evidence.

(5.) A statement, contained in a lease or in an indorsement thereon, signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

Building and Mining Leases.

Regulations respecting building leases.

8.—(1.) Every building lease shall be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair, buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorized by this Act, for or in connexion with building purposes.

(2.) A peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

45 & 46 Vict. c. 38.

(3.) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that—

(i.) The annual rent reserved by any lease shall not be less than ten shillings; and

(ii.) The total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Act, ought to be reserved in respect of the whole land for the time being leased; and

(iii.) The rent reserved by any lease shall not exceed one-fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

Regulations respecting mining leases.

9.—(1.) In a mining lease—

(i.) The rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf; and

(ii.) A fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.

(2.) A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased, an improvement authorized by this Act, for or in connexion with mining purposes.

Part of mining rent to be set aside.

11. Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely,—where the tenant for life is impeachable for waste in respect of minerals, three-fourth parts of the rent, and otherwise one-fourth part

thereof, and in every such case the residue of the rent shall go as rents and profits. 45 & 46 Vict. c. 38.

V.—Sales, Leases, and other Dispositions.

Mansion and Park.

Restriction as to mansion house, park, &c.

15. Notwithstanding anything in this Act, the principal mansion house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life, without the consent of the trustees of the settlement, or an order of the Court.

Surface and Minerals apart.

Separate dealing with surface and minerals, with or without wayleaves, &c.

17.—(1.) A sale, exchange, partition, or mining lease, may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land.

(2.) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

Mortgage.

Mortgage for equality money, &c.

18. Where money is required for enfranchisement, or for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, and the money raised shall be capital money arising under this Act.

Conveyance.

Completion of sale, lease, &c.,

20.—(1.) On a sale, exchange, partition, lease, mortgage, or charge, the tenant for life may, as regards land sold,

45 & 46 Vict. c. 38.

by conveyance.

given in exchange or on partition, leased, mortgaged, or charged, or intended so to be, including copyhold or customary or leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge.

(2.) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights, or privileges created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—

(i.) All estates, interests, and charges having priority to the settlement; and

(ii.) All such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed; and

(iii.) All leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

(3.) In case of a deed relating to copyhold or customary land, it is sufficient that the deed be entered on the court rolls of the manor, and the steward is hereby required on production to him of the deed to make the proper entry; and on that production, and on payment of customary fines, fees, and other dues or payments, any person whose title under the deed requires to be perfected by admittance shall be admitted accordingly; but if the steward so requires,

there shall also be produced to him so much of the settlement as may be necessary to show the title of the person executing the deed; and the same may, if the steward thinks fit, be also entered on the court rolls. 45 & 46 Vict. c. 38.

VI.—Investment or other Application of Capital Trust Money.

Capital money under Act; investment, &c., by trustees or Court.

21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorized object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely):

(i.) In investment on Government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities:

(ii.) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land-tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land:

(iii.) In payment for any improvement authorized by this Act:

(iv.) In payment for equality of exchange or partition of settled land:

(v.) In purchase of the seigniory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land.

45 & 46 Vict. c. 38.

(vi.) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life :

(vii.) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land :

(viii.) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes :

(ix.) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge :

(x.) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions, of this Act :

(xi.) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

Regulations respecting investment, devolution, and income of securities, &c.

22.—(1.) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly.

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement ; and any investment shall be in the names or under the control of the trustees.

(3.) The investment or other application under the

direction of the Court shall be made on the application of the tenant for life, or of the trustees. 45 & 46 Vict. c. 38.

(4.) Any investment or other application shall not during the life of the tenant for life be altered without his consent.

(5.) Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

(6.) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

(7.) Those securities may be converted into money, which shall be capital money arising under this Act.

Investment in land in England.

23. Capital money arising under this Act from settled land in England shall not be applied in the purchase of land out of England, unless the settlement expressly authorizes the same.

Settlement of land purchased, taken in exchange, &c.

24.—(1.) Land acquired by purchase or in exchange, or on partition, shall be made subject to the settlement in manner directed in this section.

(2.) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3.) Copyhold, customary, or leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances permit, with the uses, trusts, powers, and provisions to, on, and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, or in tail male, or in

45 & 46 Vict. c. 38.

tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

(4.) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, or any part thereof, or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange, or partition.

(5.) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to the charge.

(6.) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.

(7.) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals, and to easements, rights, and privileges over and in relation to land.

As to purchase moneys received under powers of settlement.

33. Where, under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Act.

Notice to trustees.

45.—(1.) A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the

solicitor at his place of business in the United Kingdom, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same. 45 & 46 Vict. c. 38.

(2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

(3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.

XI.—Court; Land Commissioners; Procedure.

Regulations respecting payments into Court, applications, &c.

46.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(3.) Every application to the Court shall be by petition, or by summons at Chambers.

Saving for other powers.

56.—(1.) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exerciseable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative.

(2.) But, in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exerciseable for any purpose provided for in this Act.

(3.) If a question arises, or a doubt is entertained, respecting any matter within this section, the Court may, on the application of the trustees of the settlement, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon.

45 & 46 Vict. c. 38.

Additional or larger powers by settlement.

57.—(1.) Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Act.

(2.) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exerciseable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by this Act, unless a contrary intention is expressed in the settlement.

Married woman, how to be affected.

61.—(1.) The foregoing provisions of this Act do not apply in the case of a married woman.

(2.) Where a married woman who, if she had not been a married woman, would have been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

45 & 46 Vict. c. 75.

45 & 46 Vict. c. 75.

Married Women's Property Act, 1882.

Married woman to be capable of holding property as a feme sole.

1.—(1.) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing, by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee.

Property of a woman married after the Act to be held by her as a feme sole.

2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

Execution of general power.

4. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act.

Property acquired after the Act by a woman married before the Act to be held by her as a feme sole.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

As to stock, &c., to which a married woman is entitled.

6. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, which at the commencement of this Act are standing in the sole name of a married woman, and

45 & 46 Vict. c. 75.

all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England or of any other bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *primâ facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorise and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband, and to indemnify the Postmaster General, the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of England, the Governor and Company of the Bank of Ireland, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

Saving of existing settlements, and the power to make future settlements.

19. Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

45 & 46 Vict. c. 75.

Repeal of 33 & 34 Vict. c. 93. 37 & 38 Vict. c. 50.

22. The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act, 1874, are hereby repealed: Provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act.

Legal representative of married woman.

23. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

Commencement of Act.

25. The date of the commencement of this Act shall be the first of January one thousand eight hundred and eighty-three.

Extent of Act.

26. This Act shall not extend to Scotland.

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